

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)	
)	
APPLICATION OF BIRCH TELECOM)	Birch Telecom of the South,
OF THE SOUTH, INC., USING THE)	Inc.'s Application for
TRADE/BRAND NAME "NOW)	Designation as an Eligible
COMMUNICATIONS," FOR)	Telecommunications Carrier
DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER IN		
THE STATE OF SOUTH CAROLINA		

I. INTRODUCTION

Birch Telecom of the South, Inc., doing business as Birch Communications, and using the trade/brand name "NOW Communications" ("Birch" or the "Company"), pursuant to Section 214(e) of the Federal Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214(e), the implementing rules of the Federal Communications Commission ("FCC"), and 26 S.C. Code Regs. 103-690 (Supp. 2011) hereby requests that the Public Service Commission of South Carolina ("Commission") designate Birch as an Eligible Telecommunications Carrier ("ETC") in South Carolina ("Application"). Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the "NOW Communications" trade or brand name to qualifying South Carolina consumers in non-rural areas. The Company will not seek access to funds from the federal Universal Service Fund ("USF") for the purpose of participating in the Link-Up program or providing service to high cost areas.¹

¹ Since Birch seeks only Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to the Company.

As demonstrated by the Application, and as certified by Christopher J. Bunce, in the Affidavit and Certification attached as **Exhibit 1**, Birch meets all the statutory and regulatory requirements for designation as an ETC in the State of South Carolina. Birch respectfully submits that designation of Birch as an ETC in South Carolina will serve the public interest and requests that the Commission grant this application expeditiously.

Correspondence or communications pertaining to this Application should be directed to Birch's attorneys of record:

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II. UNIVERSAL SERVICE OFFERING

A. Company Overview

Birch is a Georgia corporation with offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, Georgia 30305 and 2300 Main Street, Suite 340, Kansas City, Missouri 64108. Birch is a competitive local exchange carrier ("CLEC") and interexchange carrier ("IXC"), and since 1996 has been providing high-quality, cost-effective integrated communications services

and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services.

Birch, also doing business as Birch Communications, is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Carolina.² Birch is a wholly owned subsidiary of Birch Communications, Inc. (“Birch Communications”). Birch Communications, formerly known as Access Integrated Networks, Inc., was granted authority to provide local and long distance telecommunications services in South Carolina by Order No. 1999-801 issued November 15, 1999, in Docket No. 1999-323-C. On December 18, 2008, the Commission issued Order No. 2008-824 approving Access Integrated Networks, Inc.’s, doing business as Birch Communications, request to change the name to “Birch Communications, Inc.”

The Birch family of companies either offer service or are certificated to offer telecommunications services as CLECs and intrastate IXC in 38 states and currently serves approximately 118,000 customers. For numerous years, Birch has been providing wireline Lifeline service in 18 states as a non-ETC reseller using resold services from AT&T. Birch serves approximately 1200 wireline Lifeline customers at this time, including approximately 230 non-ETC Wireline Lifeline customers in South Carolina.

Birch’s request for ETC status is currently pending before the FCC, and will cover the states of Alabama, Florida, North Carolina, and Tennessee. In addition to South Carolina, Birch

² Birch was granted authority to provide resold and facilities-based local exchange and intrastate interexchange telecommunications services by Order No. 2000-792 issued September 25, 2000 in Docket No. 2000-0265-C.

is in the process of filing ETC designation applications in the States of Georgia, Mississippi, Louisiana, Kentucky, Missouri, Kansas, Ohio, Illinois, Indiana, Arkansas, Oklahoma, and Wisconsin. Birch has never been denied ETC designation by any state commission or by the FCC in connection with any state.

Questions concerning the ongoing operations of Birch following certification should be directed to:

Dave Schmidt
Birch Communications
2300 Main Street, Suite 600
Kansas City, Missouri 64180
(816)300-1465

Birch attaches as **Exhibit 2** a current list of its officers, along with biographical information for each, showing that it has the expertise necessary to provide the services specified herein.

Exhibit 3 contains a list of each exchange for which Birch is requesting ETC designation in South Carolina (the “Service Area”). Birch, in its provision of wireless services, will offer resold services which the Company will obtain from its underlying wireless provider, Sprint.

B. Proposed Lifeline Offering

Birch will resell the wireless services of Sprint. Birch’s Lifeline customers will not have to pay for their mobile devices and will receive a preset amount of free minutes on a monthly basis. The terms and conditions of Birch’s service plans are detailed on pages 7-8 of the approved Compliance Plan attached as **Exhibit 4**. A copy of the Federal Communications Commission’s notice of approval of the Compliance Plan is attached as **Exhibit 5**. A copy of Birch’s approved Compliance Plan can also be found on the FCC website at: <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>.

Birch intends to provide the following Lifeline and Non-Life Plans in South Carolina throughout the coverage area of its underlying provider, Sprint:

250 Minute Voice Only Plan

Retail Price

Lifeline

Free

250 Minute Talk/Text Plan

Lifeline

Free

Non-Lifeline

\$12.75

Lifeline and non-Lifeline customers will have the option to purchase additional minutes anytime during the month that carry over for 2 months and an option for international calling with per-minute pricing based on the country to be called which will be provided to the consumer when opting for this capability. Additional minutes will be available at the following prices:

<u>Additional minutes</u>	
Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

Lifeline customers who reside in South Carolina have the option of choosing the 250 Minute Voice Only Plan or the 250 Minute Talk/Text Plan. Customers choosing the Voice Only Plan will be provided with 250 minutes of voice services without rollover. This plan does not include text messaging, but customers can purchase separate packages for text messaging. The 250 Minute Talk/Text Plan provides an allotment of 250 units of anytime talk and text messaging at a rate of 1 text per voice minute without rollover.

These additional minutes plans are available for purchase at Birch's third-party dealer retail locations and on its website. The Lifeline plans will also include a free handset and the following custom calling features:

- (a) Caller ID;
- (b) Call Waiting;
- (c) Call Forwarding;
- (d) 3-Way Calling; and
- (e) Voicemail.

Under Birch's proposed low-income wireless offering, each eligible wireless customer will receive a 911 compliant handset at no cost to the subscriber. The Lifeline Plans will include a wireless handset. There are several handset options with at least one free choice and the possibility of additional choices.³ Wireless handsets will be delivered at no charge to qualifying customers, service will be activated, and the minutes will be added upon certification of the customer for Lifeline.

C. Plan Enrollment and Prevention of Fraud, Waste and Abuse

Birch currently offers wireline Lifeline services as a non-ETC reseller and has implemented the FCC's *Lifeline Reform Order*⁴ rule changes into its existing wireline, non-ETC program. Birch will comply with the uniform eligibility criteria established in new section 54.409 of the FCC Rules and 26 S.C. Code Regs. 103-690.1(E)(a)(4) as modified by Commission Order No. 2012-234. Subscribers will be required to demonstrate eligibility based

³ Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

⁴ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb 6 2012) ("*Lifeline Reform Order*").

at least on: (1) household income at or below 135% of the Federal Poverty Guidelines for a household of that size; (2) the household's participation in one of the federal assistance programs listed in new section 54.409(a)(2); or (3) meeting eligibility criteria established by South Carolina for its residents, provided such criteria are based solely on income or factors directly related to income per new section 54.409(a)(3) of the FCC Rules. In addition, the Company will confirm that the subscriber is not already receiving a Lifeline service and no one else in the subscriber's household is subscribed to a Lifeline service.

Birch intends to add new subscribers to the Lifeline program through Birch internal sales agents or through Birch-authorized third-party dealers. Birch currently utilizes approximately 100 third-party dealers for its wireline Lifeline product (non-ETC reseller), and plans to offer its wireless Lifeline product at those same locations plus additional locations that would be frequented by the target audience for Lifeline services. Birch's current third-party dealers include check cashing locations, grocery stores, computer stores, independent telephone retailers, storage facilities, beauty supply stores, and pawn shops. Once wireless Lifeline service is implemented, Birch plans to add independent wireless retailers and mall kiosks to its potential third-party dealer locations.

Detailed information about Birch's procedures to ensure consumer eligibility, enrollment and certification are provided in Birch's approved Compliance Plan, **Exhibit 4**, p. 10-17. Consistent with federal requirements, Birch requires customers to certify at the time of service activation and annually thereafter that they: (1) are the head of household; (2) participate in one of the state-approved means tested programs; (3) will be receiving Lifeline-supported services only from Birch; (4) do not currently receive Lifeline support; and (5) will notify Birch in the event that they no longer participate in the qualifying program. See **Exhibit 4**, pages 14-17, and

Attachments A and B, for specific information on eligibility determination procedures that would be used by Birch.

If Birch has a reasonable basis to believe that one of its Lifeline subscribers no longer meets the eligibility criteria, the Company will notify the subscriber of impending termination in writing and in compliance with any state dispute resolution procedures applicable to Lifeline termination, and give the subscriber 30 days to demonstrate continued eligibility.⁵ A demonstration of eligibility must comply with the annual verification procedures found in Section 54.410(f), including the submission of a certification form.⁶

To supplement its verification and certification procedures prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.⁷ Detailed information on the additional measures taken by Birch to prevent fraud, waste and abuse is provided in **Exhibit 4**, p. 21-24.

III. COMMISSION HAS JURISDICTION TO DESIGNATE WIRELESS ETCs

Section 214(e)(2) of the Communications Act authorizes state commissions such as the Public Service Commission of South Carolina to designate ETC status for federal universal

⁵ *Lifeline Reform Order* at ¶ 143; 47 C.F.R. § 54.405(e)(1).

⁶ 47 C.F.R. §54.410 (effective April 2, 2012).

⁷ *Lifeline Reform Order* ¶ 257.

service purposes.⁸ The FCC has further ruled that Section 214(e)(2) “provides state commissions with the primary responsibility for designating ETCs.”⁹

The FCC has promulgated rules governing ETC designations, 47 C.F.R. § 54.101, §§ 54.201-203, and §§ 54.205-207 (the “FCC Rules”), to establish various requirements for carriers to obtain ETC status. Applicants seeking ETC status in South Carolina must address and satisfy each of the ETC designation criteria under the FCC Rules and Regulations and 26 S.C. Code Regs. 103-690.

IV. BIRCH SATISFIES THE REQUIREMENTS FOR ETC DESIGNATION

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that ETC applicants must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier’s services, except where the Commission has forbore from the “own facilities” requirement. Applicants must also commit to advertise the availability and rates of such services.¹⁰ As detailed below, Birch satisfies each of these requirements.

A. Birch Will Provide Service Consistent with the FCC’s Grant of Forbearance

In its *Lifeline Reform Order*, the FCC decided to forbear, on its own motion, from applying the facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the

⁸ 47 U.S.C.A. § 214(e)(2). *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd 8776, 8858-59 (¶ 145) (1997). (*Universal Service First Report & Order*”).

⁹ *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6372 (¶ 1, n. 2) (2005) (“*ETC Criteria Order*”) ; *see also* 26 S.C. Code Regs. § 103-690 and 103-690.1.

¹⁰ *See* 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

ETC's compliance with certain 911 requirements and the ETC's filing with and approval by the FCC of a compliance plan describing the ETC's adherence to certain protections prescribed by the FCC ("Blanket Forbearance").

Birch seeks limited ETC designation in South Carolina to participate in the Lifeline program and has opted to pursue Blanket Forbearance. On July 2, 2012, Birch filed its Further Amended Compliance Plan ("Compliance Plan") with the FCC. See **Exhibit 4**. The FCC approved the Compliance Plan on August 8, 2012. See **Exhibit 5**; *see also* <http://www.fcc.gov/encyclopedia/lifeline-compliance-plans-etc-petitions>. Birch commits to providing Lifeline service in South Carolina in accordance with the Compliance Plan and requests ETC designation in South Carolina.

B. Birch is a Common Carrier.

Only a "common carrier" receiving designation as an ETC under 47 U.S.C. § 214 is eligible to receive subsidies from the federal USF. Wireless carriers are common carriers under federal law.¹¹ Common carriers that provide services consistent with the requirements of Section 214(e) may be deemed ETCs.¹² Birch is a common carrier by virtue of its current provision of competitive local exchange and interexchange services, and will be a common carrier by virtue of its provision of wireless services. Therefore, Birch certifies that it is a common carrier under 47 U.S.C.A. § 214(e)(1) for purposes of ETC Designation.

¹¹ 47 U.S.C. § 332(c)(1) (an entity providing commercial mobile services is deemed to be a common carrier); *see also* 47 U.S.C. § 332(d)(1) (defining "commercial mobile service" to be any mobile service that is provide for profit and makes interconnected service available to the public).

¹² 47 U.S.C. § 214(e)(6) provides that wireless carriers not otherwise subject to state commission jurisdiction shall be designated as ETCs if they meet the requirements of 47 U.S.C. § 214(e)(1) consistent with applicable federal and state law.

C. Birch Will Provide All Required Services and Functionalities

Birch will offer all required services and functionalities. Section 214(e)(1)(A) of the Act¹³ requires an ETC to offer the services that are supported by federal universal service support mechanisms under section 254(c). Effective December 29, 2011, pursuant to the *USF/ICC Reform Order*¹⁴, as further clarified by the *USF/ICC Order on Reconsideration*¹⁵, the FCC eliminated its former list of nine supported services and amended section 54.101(a) of its rules to specify that “voice telephony service” is supported by the federal universal service mechanisms.

Through its service arrangements with underlying carriers, Birch is able to offer all of the services and functionalities required by S.C. Code Regs. 103-690(C)(a) and Section 54.101(a) and 54.202(a) of the FCC Rules including the following:

1. Voice Grade Access to the Public Switched Telephone Network

Birch will offer its customers voice telephony services, including access to the Public Switched Telephone Network as required by 47 C.F.R. §§ 54.101(a) through the purchase of wholesale CMRS services from Sprint.

¹³ 47 U.S.C. § 214(e)(1).

¹⁴ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Reform Order*”).

¹⁵ *In the Matter of Connect America Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Order on Reconsideration, FCC 11-189 (rel. Dec. 23, 2011) (“*USF/ICC Order on Reconsideration*”).

2. Local Usage

Birch's service will include local usage that allows customers to originate and terminate calls within a local calling area without additional charge to end users. Birch's service plan will allow South Carolina Lifeline customers to choose between a 250 minutes voice plan and a 250 minutes talk/text plan as previously described. *See also Exhibit 4*, p. 7-8. To date, the FCC has not specified any minimum amount of local usage that an ETC must offer. Birch will comply with any and all minimum local usage requirements the FCC may adopt with respect to Lifeline service offerings. Therefore, Birch satisfies the local usage criterion for ETC designation.

3. Access to Emergency Service

The Company also will provide access to emergency services provided by local government or public safety officials, including 911 and enhanced 911 ("E911") where available and will comply with any FCC or Commission requirements regarding E911-compatible handsets. The Company commits to pay in a timely manner all applicable federal, state and local regulatory fees, including but not limited to universal service and E911 fees.¹⁶

4. Toll Limitation for Qualifying Low-Income Customers

In the *Lifeline Reform Order*, the FCC stated that toll limitation service ("TLS") would no longer be deemed a supported service.¹⁷ ETCs are not required to offer TLS to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.¹⁸ Birch's prepaid wireless Lifeline service offering will be a nationwide calling plan, and will not distinguish between toll and non-toll calls. Pursuant to the *Lifeline Reform Order*, subscribers to such services are not considered to have voluntarily elected

¹⁶ See *TracFone Wireless, Inc. Petition to Rescind State 911/E911 Condition*, FCC Docket No. 96-45 (May 3, 2010).

¹⁷ *Lifeline Reform Order* at ¶ 367.

¹⁸ *Lifeline Reform Order* at ¶ 49.

to receive TLS.¹⁹ Consumers, however, may implement toll control for international calls to the extent they seek that capability. Moreover, consumers purchasing Birch's prepaid wireless Lifeline service offering will have the ability to monitor their minute usage and balances from their handset, online, or through customer service. Birch will not seek reimbursement for TLS.

5. Other Services

Additionally, Birch offers its customers access to operator services, the ability to make "long distance" telephone calls, and access to directory assistance services by dialing "411" through Birch's own facilities or through arrangements with Sprint.

D. Birch Will Meet the Additional Requirements for Designation Established by the Commission and the FCC's Regulations

The requirements for designation of ETCs were recently amended by the FCC. Effective April 2, 2012, 47 C.F.R. § 54.202 imposes a number of changed requirements in order to be designated an ETC under Section 214(e)(6). Birch will comply with the requirements of 47 C.F.R. § 54.202, effective April 2, 2012, and will comply with the South Carolina requirements for initial designation pursuant to 26 S.C. Code Regs. 103-690 as illustrated below.

1. Commitment to Provide Service 26 S.C. Code Regs. 103-690(C)(a)(1)(A)

As required by 26 S.C. Code Regs. 103-690(C)(a)(1)(A), commits to provide service throughout its proposed ETC designated service area to all customers who make a reasonable request for service. Birch also certifies that it will (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its

¹⁹ *Lifeline Reform Order* at ¶ 230.

existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.²⁰

Birch not only commits to provide service throughout its Service Area, but also commits to provide universal service in a timely manner to all customers who make a reasonable request for service pursuant to the FCC Rules. If designated as a wireless ETC, Birch will provide service throughout its Service Area through the resale of services. Birch has a direct contract for wireless services from Sprint. Birch is willing to accept carrier of last resort obligations throughout the universal service areas in which Birch is designated as an ETC.

2. **Advertising and Outreach Program**
26 S.C. Code Regs. 103-690(C)(a)(1)(C) & (a)(7)

Birch will advertise the availability of Supported Services and the related charges using media of general distribution as required by 47 U.S.C. § 214(e)(1)(B), 26 S.C. Code 103-690(a)(7), and 47 C.F.R. 54.201(d)(2) and in accordance with the requirements of the *Lifeline Reform Order*. Birch certifies via the Affidavit attached as **Exhibit 1** that it will comply with the requirements of 26 S.C. Code Regs. 103-690(C)(a)(7).

Birch will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.²¹ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop

²⁰ Birch notes that the FCC eliminated the requirement that ETC applicants modify, replace, adjust or add equipment or facilities to to encompass potential customers that are outside the applicant's licensed service area but outside its existing network coverage. See *Connect America Fund Order*, at 18199-18200.

²¹ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.²²

Pursuant to 26 S.C. Code Regs. 103-690(C)(a)(1)(C), Birch advertising and outreach plan will build on its expertise in advertising its wireline Lifeline product. Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, event sponsorship, bus advertising, radio advertising, and online search engines. Birch will also engage in outbound calling campaigns (consistent with applicable telemarketing regulations). Birch also plans to target its current wireline Lifeline customers (served by Birch as a non-ETC reseller) to determine interest in converting from wireline Lifeline service to wireless Lifeline service. Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will also advertise through online search engines and third-party referral agents/dealers. *See also Exhibit 4*, p. 19-21. Sample advertising used in another state is attached as **Exhibit 6**.

²² *Lifeline Reform Order* ¶¶ 274-282.

The FCC adopted specific requirements for Lifeline advertising in its *Lifeline Reform Order* with which the Company will comply.²³ Within the deadline provided in the *Lifeline Reform Order*, the Company will include the following information regarding its Lifeline service on all marketing materials describing the service: (1) it is a Lifeline service, (2) Lifeline is a government assistance program, (3) the service is non-transferable, (4) only eligible consumers may enroll in the program, (5) the program is limited to one discount per household; (6) documentation necessary for enrollment; (7) Birch's name (the ETC); and (8) notice that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program.²⁴ These statements will be included in all print, audio, video and web materials used to describe or enroll customers in the Company's Lifeline service offering, as well as the Company's application forms and certification forms. This specifically includes the Company's website and other marketing materials.²⁵

**3. Ability to Remain Functional in Emergency Situation
26 S.C. Code Regs. 103-690(C)(a)(2) and 47 C.F.R. § 54.202(a)(2),**

Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid

²³ *Lifeline Reform Order* at ¶¶ 275-82.

²⁴ *Lifeline Reform Order* at ¶ 275.

²⁵ *Id.*

wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations.

Birch's MVNO contract arrangement with Sprint imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations. As a large, nationwide wireless carrier, Sprint is subject to regulatory requirements to remain functional during emergency situations.²⁶ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees. As a result Birch is able to provide to its customers the same ability to remain functional in emergency situations as currently provided by Sprint to its own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.

In accordance with 26 S.C. Regs. § 103-690.1(B)(b)(6), Birch hereby certifies and will annually certify, that it is able to function in emergency situations. *See Exhibit 1.*

**4. Consumer Protection and Commitment to Provide Quality Service
26 S.C. Code Regs. 103-690(C)(a)(3) and 47 C.F.R. 54.202(a)(1) & (2)**

An ETC applicant must demonstrate that it will satisfy all consumer protection and service quality standards pursuant to 26 S.C. Code Reg. 103-690(C)(a)(3). The Commission and the FCC have determined that a commitment by wireless applicants to comply with Consumer Code for Wireless Service – adopted by the Cellular Telecommunications and Internet Association's ("CTIA") satisfies this requirement.²⁷ Per the requirements of 47 C.F.R. § 202(a)(1)(i) Birch certifies that it will comply with the service requirements applicable to the low-income support it receives as a result of designation as an ETC for purposes of receiving

²⁶ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁷ 47 C.F.R. § 54.202(a)(3). See Affidavit and Certification attached as **Exhibit 1.**

Lifeline.

Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product. Birch will satisfy all consumer privacy protection standards as provided in 47 C.F.R. § 64, Subpart U as applicable and will protect Customer Proprietary Network Information (“CPNI”) as required by state and federal law and will certify compliance with the same on an annual basis.

On an annual basis Birch will certify its compliance with the CTIA Consumer Code and report the number consumer complaints or trouble reports per 1,000 handsets or access lines consistent with the FCC’s *USF Order*²⁸ and 26 S.C. Code Reg. 103-690.1(B)(a) and (b)(4). Birch in general commits to satisfying all applicable state and federal requirements related to consumer protection and service quality standards.

**5. Comparable Local Usage / Rate Plan
26 S.C. Code Regs. 103-690(C)(a)(4)**

Pursuant to the *Connect Fund Order*, the FCC has eliminated the requirement that ETC applicants demonstrate that they offer a local usage plan comparable to the one offered by the incumbent local exchange carrier (“ILEC”) in the service areas for which it seeks designation.²⁹

**6. Equal Access
26 S.C. Code Regs. 103-690(C)(a)(5) and 47 C.F.R. § 54.202(a)(5)**

South Carolina requires an acknowledgement from a prospective ETC that it may be required to “provide equal access to long distance carriers in the event no other eligible

²⁸ *Federal-State Joint Board on Universal Service*, First Report and Order, 12 FCC Rcd 8776 at ¶ 4 (1997) (“*USF Order*”).

²⁹ *See USF/ICC Reform Order* at 18199-18200.

telecommunications carrier is providing equal access within the designated service area.” 26 S.C. Code Regs. 103-690(C)(a)(5).³⁰ See Affidavit attached as **Exhibit 1**.

**7. Universal Service Support
26 S.C. Code Regs. 103-690(C)(a)(6)**

As described earlier, Section 214(e)(1)(A) of the Act requires an ETC to offer the services supported by federal universal service support mechanisms throughout its designated service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”³¹ As described earlier, Birch will provide wireless service through resale and Blanket Forbearance from the FCC.

**8. Financial and Technical Showing
47 C.F.R. § 54.201(h)**

Birch has the financial and technical capability to provide Lifeline service. As part of the *Lifeline Reform Order*, the FCC amended its rules to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.³² Birch satisfies these criteria.

Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. In addition to the other services it offers, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T for numerous years. Birch serves approximately 1800 wireline Lifeline customers at this time as a non-ETC reseller. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch’s funds to operate will come from the non-Lifeline services it provides

³⁰ The FCC’s rules no longer require an applicant to acknowledge that the FCC may require it to provide equal access to long distance carriers. See *Lifeline Reform Order*, p. 208, revised § 54.202(a).

³¹ 47 U.S.C. § 214(e)(1)(A).

³² *Lifeline Reform Order*, p. 208, 47 C.F.R. § 54.201(h).

throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service, and has not been subject to any enforcement proceeding with respect to Lifeline services.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering wireless Lifeline products.³³ Birch’s partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service. *See also* **Exhibit 4**, p. 3-7.

V. DESIGNATION OF BIRCH AS AN ETC IN THE STATE OF SOUTH CAROLINA SERVES THE PUBLIC INTEREST CONSISTENT WITH THE FCC’S REQUIREMENTS AND 26 S.C. CODE REGS. § 103-690(C)(b)

The FCC has previously held that designating a competitor as an ETC in areas served by non-rural ILECs is *per se* in the public interest.³⁴ The Commission must determine that Birch’s designation is in the public interest by considering (1) the benefits of increased consumer choice and (2) the unique advantages and disadvantages of Birch’s service offering pursuant to 26 S.C. Code Regs. § 103-690(C)(b). These are the same factors used by the FCC.³⁵ Birch submits that it is in the public interest to designate Birch as an ETC.

³³ Based on filings made with the FCC, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications.

³⁴ *See Cellco Partnership*, 16 FCC Rcd, at 45.

³⁵ 47 U.S.C. § 54.202(c).

A. The Benefits of Increased Competitive Choice

Birch's ETC designation will bring another competitive alternative to low-income consumers in the Designated Service Area, and will exert further competitive pressures on existing wireless Lifeline providers operating in the Designated Service Area. Birch seeks to make it easier for low-income consumers located within the Designated Service Area to receive affordable telecommunications services that are comparable to those enjoyed by other consumers. Birch's ETC designation serves the public interest by providing services to a portion of the public that may not otherwise be able to obtain telecommunications services due to insufficient credit, immigrant status, or living situation. Prepaid wireless services also offer consumers convenience, control over their telecommunications spending without the imposition of high monthly fees, and the ability to pay for only those services needed. The goals of universal service mandated by Congress and the Commission are therefore served by designation of Birch as a Lifeline-only ETC.³⁶

In order to remain competitive in low-income markets, all carriers will have greater incentives to improve networks, increase service offerings and lower prices. This results in improved consumer services and, consistent with federal law, benefits consumers by allowing Birch to offer the services designated for support at rates that are "just, reasonable, and affordable."³⁷

B. Unique Advantages of Birch's Service Offerings

Birch will offer a unique, easy to use, competitive and highly affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional

³⁶ 47 U.S.C. § 254.

³⁷ 47 U.S.C. § 254(b)(1).

services. Detailed information on Birch's service offerings was provided in a previous section and the attached Exhibits.

The public interest benefits of Birch's wireless service offering includes larger local calling area (as compared to traditional wireline carriers), the convenience and security afforded by mobile service, the opportunity for customers to control costs by receiving a preset amount of monthly airtime at no charge, the ability to purchase additional usage at flexible and affordable amounts, and 911 service. The Company's Lifeline customers will receive the same high-quality wireless services and exceptional customer service provided to all Birch customers. Designation of Birch as an ETC benefits the public interest of low-income consumers throughout Birch's Service Area. Approval of Birch's ETC Application will serve the public interest by increasing participation of qualified consumers in the Lifeline program in the State of South Carolina.

C. Impact on the Universal Service Fund

Designation of Birch as an ETC will not pose any adverse effect in the growth in the high-cost portions of the USF, nor will it create or contribute to an erosion of high-cost funding from any rural or non-rural telephone company. The FCC reaffirmed this position when it stated that "the potential growth of the fund associated with high-cost support distributed to competitive ETCs" is not relevant to carriers seeking support associated with the low-income program.³⁸

With Lifeline, ETCs only receive support for customers they obtain. The amount of support available to an eligible subscriber is the same whether the support is given through Birch or an incumbent LEC. Birch would only increase the amount of Lifeline funding if it obtains Lifeline customers not enrolled in another ETC's Lifeline program. The FCC recognized that the

³⁸ Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("*TracFone Forbearance Order*") at ¶ 17.

total effect of additional low-income-only ETC designations would have a minimal impact on the fund when it stated that “any increase in the size of the fund would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.”³⁹ By implementing the safeguards established in the *Lifeline Reform Order*, Birch will minimize the likelihood that its customers are not eligible or are receiving duplicative support either individually or within their household. Birch’s ability to increase the Lifeline participation rate of qualified low-income individuals will further the goal of Congress to provide all individuals with affordable access to telecommunications service. Any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income customers. Approval of Birch’s ETC Application will serve the public interest by increasing participation of qualified consumers in the Lifeline program in the State of South Carolina.

VI. ANTI-DRUG ABUSE CERTIFICATION

Birch certifies that, pursuant to Sections 1.2001 through 1.2003 of the FCC’s rules, that neither Birch nor its subsidiaries, affiliates, officers, directors, or persons holding 5% or more of its outstanding stock, are subject to a denial of federal benefits, including Commission benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.⁴⁰

VII. ANNUAL REPORTING REQUIREMENTS

Consistent with the requirements of 47 C.F.R. § 54.422 (effective April 2, 2012) and with 26 S.C. Code Regs. 103-690.1 Birch will comply with the federal and state annual reporting

³⁹ *TracFone Forbearance Order*, at ¶ 17.

⁴⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 12 FCC Rcd 22947, 22948-949 (1997).

requirements. Pursuant to 26 S.C. Code Regs. 103-690(C)(a)(5) through (7), Applicant attaches **Exhibit 1** an Affidavit and Certification signed by an officer of Birch.

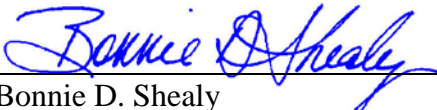
VII. CONCLUSION

WHEREFORE, premises considered, having demonstrated herein that Birch satisfies all the conditions of eligibility necessary for designation as an ETC in South Carolina, and having shown that the public and universal service interests of the telecommunications consumers of the State of South Carolina will be properly served, Birch respectfully requests that the Commission promptly grant this Application and designate Birch, LLC as a wireless ETC.

Dated this 15th day of November, 2012.

Robinson, McFadden & Moore, P.C.

By:



Bonnie D. Shealy
1901 Main Street, Suite 1200
Post Office Box 944
Columbia, SC, 29202
Telephone 803-779-8900
Fax 803-252-0724
bshealy@robinsonlaw.com

Attorneys for Birch Telecom of the South, Inc.


**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)
)
APPLICATION OF BIRCH TELECOM)
OF THE SOUTH, INC., USING THE)
TRADE/BRAND NAME "NOW)
COMMUNICATIONS," FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF SOUTH CAROLINA)

VERIFICATION

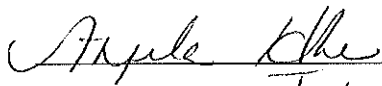
I, Christopher J. Bunce, Senior Vice President, Legal and General Counsel, first being duly sworn upon oath, depose and say that I am an officer authorized to represent Birch Telecom of the South, Inc., the Applicant in this application; that I have read the Application and know the contents; that the contents are true and correct to the best of my knowledge and belief.

Birch Telecom of the South, Inc.

By: 
Christopher J. Bunce, Senior Vice President,
Legal General Counsel

Subscribed and sworn to before me this

15 day of November, 2012.


Notary Public for Jackson County Missouri
My Commission Expires: 6-9-14

ANGELA A. HOKE
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County
My Commission Expires June 9, 2014
Commission # 10887286

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)
)
APPLICATION OF BIRCH TELECOM)
OF THE SOUTH, INC., USING THE)
TRADE/BRAND NAME “NOW)
COMMUNICATIONS,” FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF SOUTH CAROLINA

EXHIBITS

Exhibit 1 - Affidavit and Certification
Exhibit 2 - Officers
Exhibit 3 - Wire Centers
Exhibit 4 - Compliance Plan
Exhibit 5 - FCC Approval
Exhibit 6 - Sample Advertising

}

**BEFORE
THE PUBLIC SERVICE COMMISSION
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APPLICATION OF BIRCH TELECOM)
OF THE SOUTH, INC., USING THE)
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**EXHIBIT 1
AFFIDAVIT AND CERTIFICATION**

AFFIDAVIT AND CERTIFICATION OF CHRISTOPHER J. BUNCE

Personally appeared before me Christopher J. Bunce, who, being first duly sworn, deposes and states the following:

My name is Christopher J. Bunce. I am employed by Birch Telecom of the South, Inc. ("Birch") as Senior Vice President, Legal and General Counsel. My business address is 2300 Main Street, Suite 340, Kansas City, MO 64108. I am an officer of the Company and am authorized to make this Affidavit on its behalf, and it is based on my personal knowledge. This Affidavit is given in support of the Application to designate Birch as an eligible telecommunications carrier ("ETC").

On behalf of Birch, I certify and assert the following:

- a. Birch will provide Lifeline service in a timely manner throughout the designated service area upon reasonable request of an eligible customer;
- b. Birch acknowledges that the Federal Communications Commission ("FCC") may require Birch to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area;
- c. Birch will offer the services that are supported by the federal universal service support mechanisms by using resale of another carrier's services;
- d. Birch will advertise in a media of general distribution the availability of such services, including lifeline services and the applicable charges;
- e. Birch will provide service within a reasonable period of time, if the potential customer is within its licensed service area but outside its existing network coverage, if service can be provided at reasonable cost;
- f. Birch will implement certification policies and procedures that enable customers

to demonstrate their eligibility for Lifeline assistance as required by the FCC's *Lifeline Reform Order* and any additional state requirements;

g. Birch will comply with the FCC's 60-day non-usage policy as described in paragraphs 257-63 of the *Lifeline Reform Order*;

h. Birch certifies that it is a common carrier for purposes of ETC designation;

i. Birch certifies that it is able to function in emergency situations;

j. Birch will comply with all applicable state and federal requirements related to consumer protection and service quality standards as outlined in the Application;

k. Birch will comply with the CTIA's Consumer Code for Wireless Service;

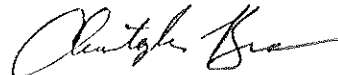
l. Birch is knowledgeable of all federal and state laws and regulations associated with offering Lifeline discounted services and Birch will comply with such requirements;

m. Birch will comply with the service requirements applicable to the support it receives as required by 47 CFR § 54.202(1)(i); and

n. All wireless handsets issued by Birch will be capable of accessing 911 services without charge regardless of the activation status and availability of minutes.

Dated this 15th day of November, 2012.

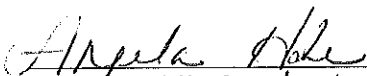
Birch Telecom of the South, Inc.



By: Christopher J. Bunce

Its: Senior Vice President, Legal and
General Counsel

SUBSCRIBED and sworn to before me
this 15 day of November, 2012



Notary Public for Jackson County Missouri
My Commission Expires: 6-9-14

ANGELA A. HOKE
Notary Public-Notary Seal
STATE OF MISSOURI
Platte County

My Commission Expires June 9, 2014
Commission # 10887286

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)
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OF THE SOUTH, INC., USING THE)
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TELECOMMUNICATIONS CARRIER IN)
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EXHIBIT 2

OFFICERS

BIRCH COMMUNICATIONS OFFICERS

Dr. R. Kirby Godsey Chairman of the Board

Dr. Godsey is Chairman of the Board of Birch Communications. Prior to becoming Chairman of the Board at Birch in 2007, Dr. R. Kirby Godsey served as the 17th president of Mercer University from 1979-2006. Prior to his appointment as President, he served as Executive Vice President and as Dean of the College of Liberal Arts. Prior to coming to Mercer in 1977, Dr. Godsey was Vice President and Dean of the College at Averett College in Danville, Virginia. Dr. Godsey earned his undergraduate degree in history and religion from Samford University in Birmingham, Alabama. He holds Master of Divinity and Doctor of Theology degrees from New Orleans Baptist Theological Seminary, and a Master of Arts in Philosophy from the University of Alabama. In 1969, he earned a Ph.D. in Philosophy from Tulane University. The University of South Carolina, Averett College and Samford University have all awarded him honorary degrees.

Vincent Oddo President & CEO

Vincent M. Oddo serves as President and Chief Executive Officer of Birch Communications. In this capacity, he is responsible for the overall strategic direction of the company as well as playing a critical role in the many acquisitions that have been completed to date. Mr. Oddo is a 25+ year veteran of the telecom industry and has specialized in growing, restructuring and managing wire-line, wireless and broadband telecommunications businesses. Prior to joining Birch in 2003, he served as SVP and COO of Network Telephone; SVP and CIO of NuVox Communications; SVP of BellSouth; and SVP of Graphic Scanning Corp. Mr. Oddo holds both a Bachelor of Arts degree and Masters degree in Public Administration from Long Island University.

Chris Aversano Chief Operating Officer and Executive Vice President

Chris Aversano serves as Chief Operating Officer and Executive Vice President of Birch Communications. In this capacity, he is responsible for managing the overall Operations and Engineering efforts of the company. Mr. Aversano is a 20+ year veteran of the telecommunications and engineering industries and has specialized in wire-line, wireless, and satellite communications. Prior to joining Birch in 2004, he served as VP of Service Delivery and Engineering Operations at Network Telephone Corp; VP of Provisioning at Nuvox; Director of Process Design at Covad Communications; and Program Manager for the United States Air Force responsible for Global Positioning System (GPS) Satellites. Mr. Aversano holds a Bachelor of Science degree in Electrical Engineering from Clemson University, as well as an Associates Degree in Telecommunications from the United States Air Force.

Edward James
Chief Financial Officer and Senior Vice President

Edward James serves as Chief Financial Officer and Senior Vice President of Birch Communications. In this capacity, he is responsible for maintaining and reporting the financial health of the company and overseeing the corporate assets of the company. Mr. James is a nearly 20 year veteran of the telecommunications and finance industries. Prior to joining Birch in 2008, he served as CFO of American Telecom Services, Inc.; Director of Finance of Carter's Inc.; various accounting, operations and finance positions at United Parcel Service (UPS). Mr. James holds a Bachelor of Arts degree from Mississippi College, and a Masters in Business Administration degree from Cumberland University.

Christopher Ramsey
Senior Vice President - Chief Sales & Marketing Officer

Chris Ramsey serves as Senior Vice President - Chief Sales and Marketing Officer. In this capacity, he is responsible for managing the overall sales and marketing efforts of the company. Mr. Ramsey is a 9-year veteran of Birch Communications who was responsible for starting and managing the telesales, account management and inside sales channels. Prior to joining Birch in 2001, he served in various leadership positions, of increasing responsibility, in Worldwide Account Management for Black and Veatch and GE Capital Assurance, Inc. Mr. Ramsey holds a Bachelor of Arts degree from Southwest Baptist University.

Chris Bunce
Senior Vice President, Legal, and General Counsel

Mr. Bunce serves as Senior Vice President, Legal & Regulatory, and General Counsel. In this capacity, he is responsible for managing the legal operations, and legal and regulatory compliance functions of the company. Mr. Bunce is a nearly 20-year veteran in communications and telecom law. Prior to joining Birch in 2000, he served as legal counsel for GST Telecom, CallAmerica, Whole Earth Networks, Hawaii Online and other telecommunications and Internet firms. Mr. Bunce holds a Bachelor's degree in both History and Journalism/Mass Communication from Iowa State University, and a Juris Doctor degree from the University of Iowa College of Law.

Tom Stachowiak
Vice President, Information Technology

Mr. Stachowiak serves as Vice President of Information Technology for Birch Communications. In this capacity, he is responsible for developing, implementing and managing the information technology needs of the company. Prior to his current position he served as Vice President, Engineering. Mr. Stachowiak is a 13+ year veteran of the telecommunications and information technology industries. Prior to joining Birch in 2005, he spent several years at Verso Technologies building and operating VoIP softswitches and application servers. He also worked for 4 years at Syracuse University conducting research on applying IP technologies to military command and control systems and distance learning. Mr. Stachowiak holds both a Masters of Science degree in Computer Science and a Masters in Business Administration degree from Syracuse University.

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)
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OF THE SOUTH, INC., USING THE)
TRADE/BRAND NAME “NOW)
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DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF SOUTH CAROLINA	

EXHIBIT 3

WIRE CENTERS

CSA	RATE CENTER	STATE
AIRAIK803	AIKEN	SC
AIRAND864	ANDERSON	SC
AIRBEA843	BEAUFORT	SC
AIRBSV803	BISHOPVL	SC
AIRCAM803	CAMDEN	SC
AIRCHA843	CHARLESTON	SC
AIRCLS864	CLEMSON	SC
AIRCLT864	CLINTON	SC
AIRCOL803	COLUMBIA	SC
AIRCON843	CONWAY	SC
AIRFLO843	FLORENCE	SC
AIRGAF864	GAFFNEY	SC
AIRGEO843	GEORGETOWN	SC
AIRGRE864	GREENVILLE	SC
AIRGWD864	GREENWOOD	SC
AIRHHI843	HILTONHEAD	SC
AIRMNN803	MANNING	SC
AIRMYR843	MYRTLE BCH	SC
AIRNEW803	NEWBERRY	SC
AIRORA803	ORANGEBURG	SC
AIRRDL843	RIDGELAND	SC
AIRSAN803	SANTEE	SC
AIRSEN864	SENECA	SC
AIRSPA864	SPARTANBG	SC
AIRSUM803	NO SUMTER	SC
AIRWLB843	WALTERBORO	SC
NCRCHE803	CHESTER	SC
NCRLNC803	LANCASTER	SC
NCRMIL803	FORT MILL	SC
NCRROC803	ROCK HILL	SC
NCRYOR803	YORK	SC

**BEFORE
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IN RE:)
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APPLICATION OF BIRCH TELECOM)
OF THE SOUTH, INC., USING THE)
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DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF SOUTH CAROLINA)

EXHIBIT 4

COMPLIANCE PLAN

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BIRCH COMMUNICATIONS, INC.)	WC Docket No. 09-197
)	
Compliance Plan)	WC Docket No. 11-42
)	
)	
Petition for Designation as an Eligible Telecommunications Carrier pursuant to Section 214(e)(6) of the Communications Act for Lifeline Support Only)	
)	
<hr style="width: 50%; margin-left: 0;"/>)	

FURTHER AMENDED COMPLIANCE PLAN OF BIRCH COMMUNICATIONS, INC.

Birch Communications, Inc. (“Birch”), by its attorneys, respectfully submits this Amended Compliance Plan to be associated with its Petition for designation as an eligible telecommunications carrier (“ETC”) pursuant to Section 214(e)¹ of the Communications Act of 1934, as amended (the “Act”), and Section 54.201² of the rules and regulations of the Federal Communications Commission (“Commission”), which was filed on April 27, 2012 in the above-referenced matters. Birch’s original Compliance Plan was filed May 7, 2012, and an amendment was filed June 1, 2012. Birch seeks ETC designation for Lifeline support only to provide prepaid wireless services under the “NOW Communications” brand name in the non-rural areas of the following states: Alabama, Florida, North Carolina, and Tennessee (the “Designated Service Area”).³

¹ 47 U.S.C. § 214(e).

² 47 C.F.R. § 54.201.

³ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a subsidiary of Birch and operates as a certificated carrier in Alabama, Florida, North Carolina, and Tennessee. More information on Birch’s corporate structure is set forth herein.

Both the Act and the Commission's rules require a carrier seeking ETC designation to offer the supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.⁴ In the *Lifeline Reform Order*, however, the Commission decided to conditionally forbear from application of the Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.⁵ Specifically, the Commission determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards against waste, fraud and abuse as the Wireline Competition Bureau may deem necessary.⁶

To avail itself of the Commission's conditional grant of forbearance from the facilities requirement, Birch provides this Compliance Plan in accordance with the requirements of the *Lifeline Reform Order*⁷ and the *Public Notice* issued by the Wireline Competition Bureau on February 29, 2012.⁸ Specifically, Birch's Compliance Plan provides information regarding Birch's planned Lifeline service offerings and outlines the measures Birch will take to implement the obligations contained in the *Lifeline Reform Order* as well as further safeguards

⁴ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁵ *Lifeline Reform Order* ¶ 368.

⁶ *Lifeline Reform Order* ¶ 368.

⁷ WC Docket Nos. 11-42, 03-109, 12-23 and CC Docket No. 96-45, *Lifeline and Link Up Reform and Modernization, et al.*, FCC 12-11, Report and Order and Further Notice of Proposed Rulemaking, ¶ 368 ("*Lifeline Reform Order*").

⁸ WC Docket Nos. 09-197, 11-42, *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, Public Notice, DA 12-314 (rel. Feb. 29, 2012) ("*Public Notice*").

against waste, fraud and abuse. To that end, Birch provides the information requested in the *Public Notice*, which indicated compliance plans should contain the following:

(1) Information about the carrier and the Lifeline plans it intends to offer:

(a) names and identifiers used by the carrier, its holding company, operating company and all affiliates;

Birch is a competitive local exchange carrier (“CLEC”) and interexchange carrier (“IXC”), and since 1996 has been providing high-quality, cost-effective integrated communications services and related information technology services to residential and small and medium-sized business (“SMB”) customers. Today, Birch offers a variety of products, services and tailored solutions including local voice, long distance voice, broadband Internet, converged Internet Protocol (“IP”) solutions, and related telecommunications and IT services.

Birch is a Georgia corporation with offices located at 3060 Peachtree Road NW, Suite 1065, Atlanta, GA 30305 and 2300 Main Street, Suite 340, Kansas City, MO 64108. Birch has authority to provide interstate and international telecommunications services from the Commission.⁹ Birch’s wholly-owned subsidiary, Birch Communications of Virginia, Inc., operates pursuant to Birch’s international 214 authority and is registered to provide interstate telecommunications services.¹⁰ Birch’s wholly-owned subsidiary, Birch Telecom, Inc., has authority to provide international telecommunications services.¹¹ The following wholly-owned subsidiaries of Birch Telecom, Inc. operate pursuant to Birch Telecom Inc.’s international authority and also provide interstate telecommunications services: Birch Telecom of the South, Inc., Birch Telecom of the West, Inc., Birch Telecom of the Great Lakes, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Oklahoma, Inc., Birch Telecom of Texas Ltd., LLP, Birch

⁹ IB File No. ITC-214-19970926-00584, FCC Filer ID 815113.

¹⁰ FCC Filer ID 828502.

¹¹ IB File No. ITC-214-19990701-00441.

Telecom of Kansas, Inc., Birch Communications of the Northeast, Inc., Ionex Communications, Inc., Ionex Communications South, Inc., and Ionex Communications North, Inc.¹² Each of these subsidiaries also operates under the D/B/A name of “Birch Communications,” and certain of Birch’s subsidiaries also serve customers under the brand name “NOW Communications.”¹³ Customers purchasing Birch’s prepaid wireless Lifeline service offering will see the “NOW Communications” logo.¹⁴

The Birch family of companies either offer service or are certificated to offer telecommunications services as CLECs and intrastate IXC in the following 38 states: Alabama, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Nebraska, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, Wisconsin, and Wyoming. The Birch family of companies currently serves approximately 118,000 customers throughout Birch’s 38-state territory.

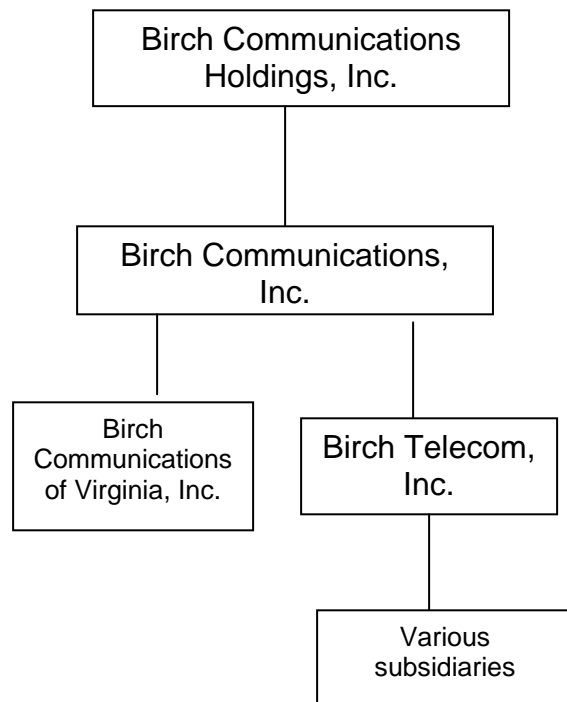
Birch Communications Holdings, Inc. (“Birch Holdings”) owns a 100% voting and equity interest in Birch. Birch Holdings is a Georgia corporation whose principal business is

¹² Birch Telecom of the South, Inc. (FCC Filer ID 820616), Birch Telecom of the West, Inc. (FCC Filer ID 827985), Birch Telecom of the Great Lakes, Inc. (FCC Filer ID 826636), Birch Telecom of Missouri, Inc. (FCC Filer ID 819422), Birch Telecom of Oklahoma, Inc. (FCC Filer ID 820061), Birch Telecom of Texas LTD LLP (FCC Filer ID 819948), Birch Telecom of Kansas, Inc. (FCC Filer ID 807993), IONEX Communications, Inc. (FCC Filer ID 815376), Birch Communications of the Northeast, Inc. (FCC Filer ID 828483), Ionex Communications South, Inc. (FCC Filer ID 808443), Ionex Communications North, Inc. (FCC Filer ID 815082).

¹³ These subsidiaries are Birch Telecom of the South, Inc., Birch Telecom of Missouri, Inc., Birch Telecom of Kansas, Inc., Birch Telecom of Oklahoma, Inc., and Birch Telecom of Texas Ltd., L.L.P. Birch acquired the use of the “NOW Communications” trade name in an earlier asset acquisition.

¹⁴ Birch is reviewing whether a separate legal entity should be established for the provision of its prepaid wireless Lifeline service or whether the service should be provided through one of the existing Birch entities, such as Birch Telecom of the South, Inc. (FCC Filer ID 820616), which is a certificated carrier in Alabama, Florida, North Carolina, and Tennessee.

telecommunications holdings. The address for Birch Holdings is 3060 Peachtree Road, NW, Suite 1065, Atlanta, GA 30305. Below is Birch's organizational chart:



The following entities and individuals hold a ten percent (10%) or greater direct or indirect ownership interest in Birch Holdings: (1) Holcombe Green, a U.S. citizen, owns a 66% voting and equity interest in Birch Holdings and (2) R. Kirby Godsey, a U.S. citizen, owns a 32% voting and equity interest¹⁵ in Birch Holdings. The business address for both Mr. Green and Mr. Godsey is 3060 Peachtree St., NW, Suite 1060, Atlanta, GA 30305. None of the entities or individuals holding an interest in Birch or Birch Holdings hold any interests in other telecommunications-related entities.

¹⁵ R. Kirby Godsey holds his percentage through his individual holdings and through the R. Kirby Godsey 2008 Grantor Retained Annuity Trust.

(b) detailed information demonstrating that the carrier is financially and technically capable of providing the supported Lifeline service in compliance with the Commission's rules;

The Commission has stated that the “relevant considerations” for demonstrating that a carrier is financially and technically capable would be whether the applicant previously offered services to non-Lifeline consumers, how long the applicant has been in business, whether the applicant intends to rely exclusively on universal service fund disbursements to operate, whether the applicant receives funds from other sources, and whether the applicant has been subject to enforcement action or ETC revocation proceedings in other states.¹⁶ Birch has been operating as a CLEC/IXC since 1996, and currently operates in 38 states. In addition to the other services it offers, Birch has been providing wireline Lifeline services in 18 states as a non-ETC reseller using resold services obtained from AT&T for numerous years. Birch serves approximately 1800 wireline Lifeline customers at this time as a non-ETC reseller. Birch does not, and will not, rely on universal service fund disbursements to operate - the majority of Birch's funds to operate will come from the non-Lifeline services it provides throughout its 38-state territory. Birch has not been subject to an abnormal number of enforcement proceedings given the significant number of customers it serves and the more than 15 years it has been offering service.

With respect to the prepaid wireless Lifeline service, Birch will resell the wireless services of Sprint, which provides wholesale capacity to wireless resellers. Like several other prepaid wireless providers, Sprint will provide Birch with the network infrastructure and wireless transmission facilities needed for Birch to offer service as a Mobile Virtual Network Operator (“MVNO”). Sprint is a large, nationwide carrier, and serves several other MVNOs offering

¹⁶ *Lifeline Reform Order* ¶ 388.

wireless Lifeline products.¹⁷ Birch's partnership with Sprint further demonstrates that Birch is technically capable of providing a prepaid wireless Lifeline service.

(c) detailed information, including geographic locations, of the carrier's current service offerings if the carrier currently offers service;

Please see Birch's response to 1(a) above. Birch currently provides local, toll, domestic long distance, and international long distance as a CLEC/IXC in the 38 states listed above. Birch also provides broadband Internet, converged IP solutions, and related telecommunications and IT services throughout its 38-state service territory.

(d) the terms and conditions of each Lifeline service plan offering, including rates, the number of minutes provided, and additional charges, if any, for toll calls; and

At this time, Birch plans to offer the following prepaid wireless Lifeline plan at no charge to an eligible customer:

Basic Plan Prepaid Wireless Lifeline Plan

Wireless handset (there are several handset options) - at least one free choice and the possibility of additional choices¹⁸

250 nationwide minutes per month

Voicemail

National texting, with each text sent or received counting as 1 minute

911 and E911 access as available

Option to purchase additional minutes anytime during the month that carry over for 2 months

Option for international calling with per-minute pricing based on the country to be called, which will be provided to the consumer when opting for this capability

¹⁷ Based on filings made with the Commission, it appears Sprint also provides underlying MVNO services to other carriers such as PlatinumTel, i-wireless, and CAL Communications, which also have sought ETC designation from the Commission.

¹⁸ Birch is still considering which handsets will be offered, but all handsets will be compliant with all applicable Commission requirements. Handsets will be offered for free in conjunction with the prepaid wireless Lifeline product. Based upon market availability and handset prices, the consumer may have a choice of handsets. Birch is continuing to evaluate the possibility of offering premium handsets at an additional cost, but a free handset will always be offered to every prepaid wireless Lifeline subscriber.

<u>Additional minutes</u>	
Minutes	Price
200	13.95
250	16.95
300	19.95
400	25.95
900	49.95

Available minutes are nationwide, and there are no additional charges for toll calling.

(e) all other certifications required under newly amended section 54.202 of the Commission's rules.

Section 54.202 of the Commission's rules requires a common carrier seeking ETC designation to: (1) certify that it will comply with the service requirements applicable to the support that it receives;¹⁹ (2) submit a five-year plan for proposed improvements or upgrades to the applicant's network unless the applicant is seeking Lifeline support only;²⁰ (3) demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations;²¹ (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;²² (5) demonstrate it is financially and technically capable of providing Lifeline service in compliance with the Commission's rules;²³ and (6) submit information describing the terms and conditions of the voice telephony plans offered to

¹⁹ 47 C.F.R. § 54.202(a)(1)(i).

²⁰ 47 C.F.R. § 54.202(a)(1)(ii).

²¹ 47 C.F.R. § 54.202(a)(2).

²² 47 C.F.R. § 54.202(a)(3).

²³ 47 C.F.R. § 54.202(a)(4).

Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges for toll calls (if any), and rates for each such plan.²⁴

Birch has addressed (5) and (6) above in (1)(b) and (1)(d), and the five-year plan required under (2) is no longer applicable given that Birch seeks designation for Lifeline support only.²⁵

With respect to (1), Birch seeks ETC designation for Lifeline support only, and therefore certifies that it will comply with the service requirements applicable to Lifeline support.

With respect to (3), Birch has the ability to remain functional in emergency situations. Birch has been offering telecommunications services since 1996, and thus has significant experience with remaining functional in emergency situations. As a CLEC/IXC, Birch is currently subject to the Commission's outage reporting rules, as well as the back-up power and outage requirements in the states in which Birch operates. As a successful, profitable CLEC for over 15 years Birch has disaster recovery contingency plans that include diverse/alternate routing, electronics redundancy, dual data centers geographically separated, and environmental controls for data and switching centers. Birch will apply these same measures to its prepaid wireless Lifeline service offering to the extent there is an emergency situation affecting Birch's operations. Birch's MVNO contract arrangement with Sprint also imposes certain obligations on Sprint to ensure Birch's prepaid wireless Lifeline service offering remains functional during emergency situations.²⁶ As a large, nationwide wireless carrier, Sprint is subject to regulatory

²⁴ 47 C.F.R. § 54.202(a)(5).

²⁵ *Lifeline Reform Order* ¶ 386.

²⁶ While Sprint will provide the underlying wireless services to Birch, Birch will provide billing services associated with the prepaid wireless Lifeline product to the Birch end user customer. The Birch billing system will be served by two geographically separate data centers for back-up redundancy, one currently located in Macon, Georgia and the other in Emporia, Kansas.

requirements to remain functional during emergency situations.²⁷ Birch's MVNO agreement with Sprint also contains certain quality of service guarantees.

With respect to (4), Birch will satisfy applicable consumer protection and service quality standards. As a CLEC/IXC, Birch is currently subject to the consumer protection and service quality standards promulgated by the Commission and the states in which Birch operates. Birch will apply these same practices to its prepaid wireless Lifeline service product, and will comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service to satisfy this requirement as permitted by the Commission's rules.²⁸

(2) A detailed explanation of how the carrier will comply with the Commission's new rules relating to determinations of subscriber eligibility for Lifeline services, including all of the consumer eligibility, consumer enrollment, and re-certification procedures, as required by Section VI and Appendix C of the *Lifeline Reform Order*, and a copy of the carrier's certification form.

Birch currently offers wireline Lifeline services as a non-ETC reseller. Birch is therefore intimately familiar with the Commission's procedures for confirming consumer eligibility, enrolling eligible customers, re-certifying eligibility at regular intervals, and recordkeeping. Birch plans to build on that expertise in offering its prepaid wireless Lifeline service offering as an ETC. Birch has implemented the Commission's *Lifeline Reform Order* rule changes into its existing wireline, non-ETC Lifeline program.²⁹ Birch will utilize the same processes outlined below for both its prepaid wireless Lifeline service (as an ETC) and its wireline Lifeline service (as a non-ETC reseller) to the extent applicable.

²⁷ Birch is also familiar with the continuity and disaster response program Sprint has implemented, which addresses the need to remain functional during emergency situations.

²⁸ 47 C.F.R. § 54.202(a)(3).

²⁹ Birch recently received and executed a certification form from AT&T, its underlying provider for its resold Lifeline services, in which Birch certified its compliance with the FCC's *Lifeline Reform Order* requirements for Birch's provision of wireline Lifeline services as a non-ETC reseller.

Set forth as Attachment A is an initial draft of Birch's prepaid wireless Lifeline enrollment and certification forms. Birch is continuing to refine these documents and will make any necessary changes to the extent the Commission or the Universal Service Administrative Company ("USAC") issue additional guidance on the language to be contained on enrollment and certification forms. Birch also confirms that it will comply with any future Commission or USAC guidance, directives, or rule changes regarding the Lifeline program.

Consumer Eligibility

Under its current procedures for its wireline Lifeline offering (as a non-ETC reseller), Birch utilizes the Texas Low Income Database Administrator database to verify and document a Texas consumer's eligibility for Lifeline service. Until a national database is available, Birch will utilize available state-level databases to verify eligibility for its prepaid wireless Lifeline service offering as required under the Commission's rules. Where state-level database technology is not available, Birch will require potential customers to provide their proof of eligibility documentation directly to Birch (either via facsimile, U.S. mail, electronic mail, or through a Birch-authorized third-party dealer as discussed below). New subscribers can be added to the Lifeline program through Birch internal sales agents or through Birch-authorized third-party dealers. Birch currently utilizes approximately 100 third-party dealers for its wireline Lifeline product (non-ETC reseller), and plans to offer its wireless Lifeline product at those same locations plus additional locations that would be frequented by the target audience for Lifeline services. Birch's current third-party dealers include check cashing locations, grocery stores, computer stores, independent telephone retailers, storage facilities, beauty supply stores, and pawn shops. Once wireless Lifeline service is implemented, Birch plans to add independent wireless retailers and mall kiosks to its potential third-party dealer locations.

In the internal sales agent situation, the potential subscriber would provide its eligibility documentation to Birch and would complete the enrollment and certification form in paper format, via third-party verification (or “TPV”), or via electronic signature as described in the “Enrollment and Certification” section below. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-1 provides more detail on the process using internal sales agents.

At the third-party retail location, a potential subscriber can provide its eligibility information in-person to the third-party dealer, which will then be transmitted to Birch for review as explained below. The potential subscriber can also complete the enrollment and certification form discussed further below and a draft of which is set forth in Attachment A. As described in more detail below, the handset would then be shipped to the customer after Birch verifies the customer’s eligibility to obtain a Lifeline product and has obtained all necessary certifications from the customer. The flow-chart in Attachment B-2 provides more detail on the process using third-party retail locations. To ensure compliance with the Commission’s one-per-household and other Lifeline eligibility requirements, Birch will require its third-party dealers to have their employees participate in quarterly webinars to receive training (and re-training) on Commission-compliance requirements for Lifeline services. Birch will also supply each third-party dealer with copies of written materials providing detailed information on the Commission’s Lifeline compliance requirements. Birch will then require the third-party dealer to sign documentation certifying that all employees selling Birch Lifeline services have read the Lifeline compliance requirements provided by Birch, understand the Lifeline compliance requirements,

and will comply with the Lifeline compliance requirements. Birch will conduct periodic audits and random checks of its third-party dealers to ensure compliance with the Commission's rules.

It is important to note that, even when a customer signs up for Lifeline service through a third-party dealer, eligibility information provided by potential consumers will be reviewed by appropriate Birch personnel pursuant to Birch's internal policies for review of Lifeline eligibility documents. Until such time as there is adequate database access allowing third-party dealers to confirm eligibility automatically through Commission-sanctioned databases, all initial eligibility determinations will be made by Birch personnel. And even after third-party dealers have access to eligibility databases, Birch will review and verify a consumer's eligibility prior to seeking reimbursement for that customer. As part of confirming a potential customer's eligibility, Birch personnel will also confirm that there is no Lifeline duplication using the process discussed under (5) below. Detailed information regarding the documents provided by the potential customer and Birch's review of the documentation will be included in the customer's account information as kept in Birch's internal recordkeeping system. Any actual documentation provided by the potential customer will be destroyed or returned to the customer upon request.³⁰

Enrollment and Certification

Once Birch determines a potential customer is eligible to receive a Lifeline service product, Birch will proceed to enroll the customer in its prepaid wireless Lifeline program and obtain the necessary certifications under the Commission's rules (this can be done by an internal Birch sales agent or a Birch-authorized third-party dealer as explained above). In its current wireline Lifeline service offering (as a non-ETC reseller), Birch utilizes TPV to enroll customers and confirm their certification for Lifeline eligibility in addition to paper enrollment/certification

³⁰ *Lifeline Reform Order* ¶ 101.

forms. Birch plans to continue utilizing TPV for its prepaid wireless Lifeline service product³¹ to the extent Birch can ensure all Commission-required information is included in the TPV without the process becoming too unwieldy for the potential customer. Birch also plans to make paper forms available for enrollment/certification and also is looking to develop an online portal that potential customers could access via any Internet connection, including at their local libraries or social service organizations for electronic signature of the required documentation.

As part of the enrollment/certification process, Birch will first obtain the relevant contact information from the potential customer: (a) full name; (b) full residential address; (c) whether the residential address is permanent or temporary; (d) billing address if different than residential; (e) date of birth, (f) last 4 digits of Social Security Number; (g) if qualifying under federal or state assistance program, which program; and (h) if qualifying under income-based criteria, the number of individuals in the household. Birch will also require the customer to indicate whether the household is shared, which would trigger the use of the Lifeline Household Worksheet developed by USAC (included as part of Birch's draft enrollment and certification form set forth in Attachment A). Birch will also confirm that the customer understands its information may be shared with USAC as necessary under the Commission's rules and to ensure there is no duplication of Lifeline benefits.

Next, Birch will utilize its TPV script or the paper form (or online portal once developed) to address each of the certifications required under the Commission's rules. The certifications will be addressed through individual questions, each to be answered by the customer before

³¹ The Commission has recognized TPV is an acceptable method for obtaining such information. *See Lifeline Reform Order* ¶ 169.

moving any further in the TPV script³² or each to be initialed by the customer on the paper form (or each to be individually acknowledged in an online format):

- Certifying, under penalty of perjury, that the consumer meets the Lifeline eligibility requirements because either the household receives benefits from a qualifying state or federal assistance program (and naming the program) or has income at or below 135% of the Federal Poverty Guidelines;
- Certifying, under penalty of perjury, that the consumer has presented documentation to Birch that accurately represents the consumer's household income or participation in the program;
- Certifying, under penalty of perjury, that the consumer will notify Birch within 30 days when it is no longer eligible for Lifeline service, whether because the consumer no longer qualifies, it has another Lifeline supported service, or for any other reason, and confirming that the customer understands failure to so notify Birch may subject it to penalties;
- Certifying, under the penalty of perjury, that the information the consumer is providing to Birch is true and correct to the best of its knowledge;
- Certifying, under the penalty of perjury, that the consumer understands that providing false or fraudulent information to receive Lifeline benefits is punishable by law;
- Certifying, under penalty of perjury, that the consumer understands it will be required to annually re-certify its continued eligibility for Lifeline at any time and that failure to do so will result in the termination of the consumer's Lifeline benefits;

³² The customer will be required to answer "Yes" to these questions on the recorded TPV to enroll in Birch's prepaid wireless Lifeline program. TPV recordings are searchable by confirmation number and primary telephone number assigned to the customer. TPV confirmation numbers will be stored in the order and account notes associated with the customer.

- Certifying, under penalty of perjury, that the consumer will provide its new address to Birch within 30 days of moving;
- Certifying, under penalty of perjury, that the consumer will be required to verify its temporary address every 90 days if the subscriber provides a temporary residential address when initially enrolling;
- Certifying, under penalty of perjury that the subscriber's household is receiving no more than one Lifeline-supported service, that the consumer receives Lifeline-supported service only from Birch, and to the best of the consumer's knowledge no one else in the subscriber's household is receiving a Lifeline-supported service;
- Certifying that the consumer understands that Lifeline is a government benefit and consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or can be barred from the program;
- Certifying that the consumer understands that Lifeline is a non-transferrable benefit, and that an eligible Lifeline subscriber may not transfer its phone service to anyone else, not even someone who is also eligible;
- Certifying that the consumer understands that non-usage of its prepaid wireless Lifeline service from Birch for any consecutive 60-day period of time will result in de-enrollment and deactivation of the service; and
- Certifying that the consumer understands that (a) Lifeline is a federal benefit; (b) Lifeline service is available for only one line per household; (c) a household is defined for purposes of the Lifeline program as any individual or group of individuals who live together at the same address and share income and expenses; (d) a household is not permitted to receive Lifeline benefits from multiple providers; and (e) violation of the

one-per-household rule constitutes a violation of Commission rules and will result in the consumer's de-enrollment from the program and could result in criminal prosecution by the United States government.

Birch will ensure its TPV script and paper documentation is written in clear, easily understood language. Birch will retain its TPV recordings and copies of its paper enrollment/certification documentation for at least five (5) years.

Once all eligibility determinations and documentation requirements are complete, Birch will ship the handset to the customer via overnight delivery to the address listed on the enrollment form. Birch will require the customer to take affirmative steps to "personally activate" the service, either by requiring the customer to use the handset to activate the Lifeline service or to complete an outgoing call.³³ If service is not initiated, Birch will not consider the consumer to be enrolled in the Lifeline program and Birch will not request Lifeline reimbursement until the subscriber personally activates its service.³⁴ The flow-charts in Attachments B-1 and B-2 provide more detail on the certification process using both internal sales agents and third-party dealers.

Annual Re-Certification

Birch's systems are capable of tracking and flagging the anniversary of a Lifeline customer's start date. Birch plans to utilize this anniversary date to ensure its Lifeline customers re-certify their eligibility to participate in the Lifeline program once a year. Birch will utilize state-level databases or the national database to the extent available to re-certify customers. Until that time, Birch plans to contact its prepaid wireless Lifeline customers via written notification, and is exploring the ability to utilize text messaging, automated voicemail, and TPV

³³ *Lifeline Reform Order* ¶ 260.

³⁴ *Lifeline Reform Order* ¶ 257.

re-certification procedures. Any customers that do not re-certify within the 30-day window will be de-enrolled from Birch's prepaid wireless Lifeline service within five (5) business days after the expiration of the subscriber's time to respond to Birch's re-certification efforts as required by Commission's rules, which is explained in more detail below.³⁵ Birch will retain any TPV recordings, paper forms, copies of text message, or other documentation for re-certification for at least five (5) years. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

(3) A detailed explanation of how the carrier will comply with the forbearance conditions relating to public safety and 911/E-911 access.

Birch's prepaid wireless Lifeline service offering will comply with the 911 requirements outlined in the *Lifeline Reform Order* necessary for application of conditional forbearance. Birch will provide its prepaid wireless Lifeline subscribers with 911 and E911 access regardless of activation status and availability of minutes. Birch will also provide its Lifeline subscribers with E911-compliant handsets and replace, at no additional charge to the subscriber, any non-compliant handset. Birch will rely on its contractual arrangement with Sprint to provide 911 and E911 services to consumers, as well as obtain the handsets to be provided to consumers.³⁶ Birch's MVNO arrangement with Sprint specifically addresses 911/E911 services and requires Sprint to supply handsets that satisfy all Commission requirements.

³⁵ 47 C.F.R. § 54.405(e)(4).

³⁶ Birch understands that it has an independent obligation to provide 911 and E911 services as a wireless reseller, and will utilize its underlying contractual arrangement with Sprint to meet that obligation. *See, e.g.*, 47 C.F.R. § 20.18(m); *Lifeline Reform Order* at n.989.

(4) A detailed explanation of how the carrier will comply with the Commission's marketing and disclosure requirements for participation in the Lifeline program;

Birch will publicize the availability of its prepaid wireless Lifeline service offering in a manner reasonably designed to reach those likely to qualify the service.³⁷ Birch will utilize the Commission's 2004 outreach guidelines for advertising its prepaid wireless Lifeline service offering.³⁸ Specifically, Birch will utilize outreach materials and methods designed to reach households that currently do not have telephone service, will develop advertising materials for non-English speaking populations within its service area, and will coordinate its outreach efforts with relevant government agencies. As required under the *Lifeline Reform Order*, Birch will ensure the Commission-required disclosures, any DBA names it uses, and details of the prepaid wireless Lifeline service offering are contained in all marketing materials.³⁹

Birch's advertising strategy for its prepaid wireless Lifeline service offering will build on its expertise in advertising its wireline Lifeline product currently offered as a non-ETC reseller. Birch understands that its ability to provide wireline Lifeline services as a non-ETC reseller may be limited in the future. As part of its marketing efforts for its prepaid wireless Lifeline service, Birch will market to those consumers currently taking its wireline Lifeline product, but will ensure that the consumer receives only one Lifeline service in accordance with the Commission's one-per-household rules.

Birch's advertising for its prepaid wireless Lifeline service offering will include, but not be limited to, targeted direct mail, advertisements in daily and weekly print periodicals, billboards, event sponsorship, bus advertising, radio advertising, and online search engines. Birch will also engage in outbound calling campaigns (consistent with applicable telemarketing

³⁷ 47 C.F.R. § 54.405(b).

³⁸ *Lifeline and Link Up*, 19 FCC Rcd 8302, ¶¶ 45-48 (2004).

³⁹ *Lifeline Reform Order* ¶¶ 274-282.

regulations). Birch will obtain marketing calling lists through various marketing activities, which may include, but not be limited to interest forms completed by prospective customers who have attended a marketing event and have provided their phone number indicating their interest in being contacted. Birch also plans to target its current wireline Lifeline customers (served by Birch as a non-ETC reseller) to determine interest in converting from wireline Lifeline service to wireless Lifeline service. Birch will also consider purchasing prospective customer lists for outbound calling campaigns once the company has determined such lists effectively target potential Lifeline customers and adhere to all applicable telemarketing regulations. Once Birch has a list of prospective customer to contact, Birch marketing personnel will deliver a marketing message that accurately and in detail describes the benefits of the Lifeline program, how the Lifeline program works, and eligibility requirements to qualify as a Lifeline customer, including a determination of whether the prospective customer is already receiving a Lifeline service (duplicative service check). If the prospective customer appears initially qualify, the outbound marketing call will initiate the completion of the Birch Lifeline Enrollment Form and receipt program eligibility documents to be reviewed by Birch personnel.

Birch will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information available regarding Birch's prepaid wireless Lifeline service offering in resource guides and other printed materials produced by those organizations, as well as in their offices or other locations visited by potential Lifeline-eligible subscribers. Birch has existing relationships with these organizations in connection with its current wireline Lifeline service offering. Birch will pro-actively market its prepaid wireless Lifeline services through state, county, municipal and non-profit community action agencies, associations and networks. These agencies support Lifeline eligible individuals and families in

obtaining support services, employment, employment training, life skills training and other services. Birch will have marketing personnel dedicated to building strong relationships with these agencies - and formulate marketing programs that support the missions of these agencies. Birch will raise awareness of Birch Lifeline services through the inclusion of Birch Lifeline information in resource guides and other support materials (online and in printed materials issued by the agency) that are provided to Lifeline-eligible prospective customers. Birch will also pursue referral arrangements and partnerships where a non-profit non-governmental agency can specifically refer Lifeline-eligible customers directly to Birch in exchange for minimal compensation or other remuneration to the agency for the referral. Birch will also raise awareness of its Lifeline services through sponsoring events held by these agencies.

(5) A detailed explanation of the carrier's procedures and efforts to prevent waste, fraud and abuse in connection with Lifeline funds, including but not limited to, procedures the carrier has in place to prevent duplicate Lifeline subsidies within its own subscriber base, procedures the carrier undertakes to de-enroll subscribers receiving more than one Lifeline subsidy per household, information regarding the carrier's toll limitation service, if applicable, and the carrier's non-usage policy, if applicable.

Prior to enrolling a Lifeline customer, Birch will take two steps to prevent duplicate Lifeline subsidies within its own subscriber base. First, Birch will review its own service records to ensure the potential customer is not currently receiving a Lifeline service from Birch. Second, Birch will utilize available state-level databases and the national database to be created to ensure the potential customer is not currently receiving a Lifeline service from any other carrier. Birch will promptly investigate any notification it receives from a state, the Commission, or USAC that one of its Lifeline customers is improperly receiving service. Birch will also update any required databases within one (1) business day of de-enrolling a consumer.⁴⁰ The flow-chart set forth in Attachment B-4 provides additional detail on the de-enrollment process described herein.

⁴⁰ *Lifeline Reform Order* ¶ 257.

De-enrollment for failure to re-certify. Birch will also re-check its internal databases and available state-level or federal databases as part of its annual re-certification process. Birch will issue a letter separate from the invoice to all subscribers, requesting them to recertify and noticing the subscriber that failure to respond within 30 days will trigger de-enrollment. The subscriber will be given the option to mail or fax back the re-certification form. The subscriber will also be given the option to complete their recertification form online, over the phone with TPV, or by mail. If the subscriber fails to respond with their completed form and documentation of eligibility by the 30th day of the notice period, Birch will de-enroll the customer by taking the following steps: Birch will place a Local Service Request (“LSR”) with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the billing system; and the credit may only be reapplied if customer goes through certification process again. The flow-chart in Attachment B-3 provides more detail on the annual re-certification process.

De-enrollment for duplicative support. Birch understands that duplicative claims are wasteful and burden the fund, and will take all necessary steps to swiftly de-enroll consumers found to be receiving duplicative federal Lifeline discounts. Upon notification from the Commission, a state, or USAC that a subscriber is receiving Lifeline service from another carrier, or more than one member of a household is receiving Lifeline service, Birch will de-enroll the subscriber within five business days.⁴¹ To the extent de-enrollment is necessary due to duplicative support, Birch will take the following steps to de-enroll a customer: Birch will immediately place a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits; remove the credit supplied by Birch to the end user from the

⁴¹ 47 C.F.R. § 54.405(e)(2); *see also Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, ¶ 15 (2011).

billing system; and have a company policy in place that the credit may only be reapplied if the customer goes through certification process again. Birch will not seek reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

De-enrollment for non-usage. As part of its de-enrollment procedures, Birch will comply with the Commission's 60-day non-usage policy. Specifically, Birch will not consider a consumer to be enrolled, and Birch will not seek reimbursement for that consumer, until the consumer activates its service in the first instance.⁴² Further, Birch will de-enroll and not seek reimbursement for any consumer whose service is inactive for a consecutive 60-day period.⁴³ Birch will define "usage" consistent with Commission rules. Specifically, the following activities will constitute "usage" of Birch's prepaid wireless Lifeline service: (1) completion of an outbound call; (2) purchase of minutes to add to the subscriber's service plan; (3) answer of an incoming call from a party other than Birch or its representative; and (4) response to direct contact from Birch and confirmation that the consumer seeks to continue receiving the Lifeline service.⁴⁴ Birch will run usage reports for each customer to determine non-usage over a period of 60 consecutive days. Despite a consumer's "usage" as defined herein and in the Commission's rules, Birch will continue to comply with its existing public safety obligations to transmit all wireless 911 calls regardless of subscriber inactivity even if Birch is no longer providing Lifeline service to that consumer.⁴⁵

When a customer has been identified for de-enrollment for non-usage, a letter will be sent to the customer, and the customer will have 30 days to respond. Birch will allow 15 calendar

⁴² 47 C.F.R. § 54.404(b)(10).

⁴³ *Lifeline Reform Order* ¶ 257.

⁴⁴ 47 C.F.R. § 54.407(c)(2); *Lifeline Reform Order* ¶ 261.

⁴⁵ *Lifeline Reform Order* ¶ 262.

days for mail delivery and handling, and a 30-day notice period thereafter. Birch will run usage monitoring reports on the customers who have been noticed and de-enroll the customer if usage is not reflected on their account by the 30th day. On the 31st day, Birch will de-enroll the customer by placing a LSR with the supporting local exchange carrier to remove the Lifeline USOC to prevent further credits and remove the credit supplied by Birch to the end user from the billing system. The flow-chart set forth in Attachment B-5 provides more information on the process for de-enrollment for non-usage.

CONCLUSION

WHEREFORE, for the forgoing reasons, Birch respectfully requests that the Commission expeditiously approve its further amended Compliance Plan and designate it as an ETC for the provision of prepaid wireless Lifeline services in the states of Alabama, Florida, North Carolina, and Tennessee.

Respectfully submitted,

BIRCH COMMUNICATIONS, INC.



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Dated: June 29, 2012

Its Attorneys

Attachment A to Compliance Plan

Draft Enrollment and Certification Form



Lifeline Enrollment Form

Three Easy Steps to Complete:

Step #1 – Complete Lifeline Enrollment Form on page 2

(And if needed Household Worksheet on page 5)

Step #2 – Locate your Lifeline benefit documentation

(More info on your required documentation on pages 3 and 4)

Step #3 – Send complete enrollment form and benefit documentation to NOW Communications

(There are many convenient ways to send them, check Page 2)



Lifeline Enrollment Form

This signed application is required to enroll you in the Lifeline program in your state. This application is only for the purpose of verifying your participation in these programs and will not be used for any other purpose.

Things to know about the Lifeline Program:

- Lifeline is a Federal benefit that is not transferrable to any other person;
- Lifeline service is available for only one line per household. A household cannot receive benefits from multiple providers;
- A household is defined, for purposes of the Lifeline program, as any individual or group of individuals living at the same address that share income and expenses; and,
- Violation of the one-per household rule is not permitted under federal rules and will result in the subscriber's de-enrollment from the program and possible criminal prosecution by the U.S. Government.

First Name: _____ MI: _____ Last Name: _____ Date of Birth: _____

Last Four Digits of Social Security Number: _____ Contact Telephone Number: _____

Residential Address:

Must be a street address (not a P.O. Box) and your principal residence.

Billing Address:

May contain a P.O. Box.

☐ Check here if the billing address is the same as the residential address.

Address Line 1: _____

Address Line 1: _____

Address Line 2: _____

Address Line 2: _____

City, State and Zip: _____

City, State and Zip: _____

This Address Is: ☐ Permanent ☐ Temporary *(If temporary, your address must be certified or updated every 90 days.)*

☐ A shared, multi-household residence →
(Complete Household Worksheet)

(Initial)

If shared, multi-household residence, I hereby certify that other household adults do not contribute income and/or share expenses in my household. *Complete Household Worksheet.*

_____ I hereby certify that I qualify to participate in at least one of the following programs (check all that apply):

(Initial) *Please see the related documentation requirements on the reverse side.*

☐ Supplemental Nutrition Assistance Program (SNAP) formerly known as Food Stamps ☐ Supplemental Security Income (SSI)

☐ Federal Public Housing Assistance (FPHA) or Section 8 ☐ Low Income Home Energy Assistance Program (LIHEAP)

☐ National School Lunch Program's free lunch program ☐ Temporary Assistance for Needy Families (TANF) ☐ Medicaid

_____ I hereby certify that my household income is at or below 135% of the Federal Poverty Guidelines; there are _____ members in my household.

(initial) *Please see the Federal Poverty Guidelines and the related documentation requirements on the reverse side.*

I certify, under penalty of perjury: Initial by Each Certification

The information provided in this application is true and correct to the best of my knowledge; I acknowledge that willfully providing false or fraudulent information in order to receive Lifeline service is punishable by fine or imprisonment, termination of all Lifeline benefits, and being barred from participating in the Lifeline program.

_____ I acknowledge that non-usage over a consecutive 60-day period will result in my de-enrollment from this Lifeline service.

_____ I am eligible for Lifeline service through participation in the qualifying program(s) or meeting the income requirements as identified above.

_____ I have provided documentation of eligibility for Lifeline service, unless otherwise specifically exempted from providing such documentation.

I will inform NOW within 30 days of any potential change in eligibility, including, but not limited to: (i) a move or change of address; (ii) any change in participation in the programs identified above or change in income or household members; (iii) receiving Lifeline service from another provider; or (iv) any other change that would affect my eligibility for Lifeline service. If I fail to inform NOW of any of these changes, I understand under penalty of perjury, I may be subject to penalties.

_____ I have provided the address where I currently reside and, if a temporary address has been provided, then I acknowledge that NOW will attempt to verify my address every 90 days, and, if I do not respond to verification attempts within 30 days, then I may be de-enrolled from my Lifeline benefits.

_____ My household will receive only one Lifeline benefit and, to the best of my knowledge, no one in my household is currently receiving Lifeline service from any other provider.

_____ I acknowledge that I will be required to annually re-certify eligibility and may be required to re-certify continued eligibility for Lifeline at any time and failure to re-certify will result in the termination of Lifeline benefits or other penalties.

_____ I authorize NOW and its agents to access any records (including financial records) required to verify my statements herein and to confirm my eligibility for Lifeline service. I authorize government agencies and their authorized representatives to discuss with and/or provide information to NOW and its agents verifying my participation in public assistance programs that qualify me for Lifeline service.

_____ I acknowledge and consent to my name, telephone number, and address being divulged to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of verifying that I, as a subscriber, do not receive more than one Lifeline benefit. In the event that USAC identifies that I am receiving more than one Lifeline subsidy for my household, all carriers involved may be notified so that I may select one service and be de-enrolled from the other.

APPLICANT SIGNATURE/TPV ID: _____

DATE: _____

FOR NOW COMMUNICATIONS OFFICE USE ONLY

Company Representative Name: _____ ☐ Database Queried? Date: ____/____/____ Database Name: _____

☐ ETC Eligibility Review Confirmation Type: ☐ Written, attached ☐ Screenshot, attached ☐ ETC employee

Type of Documentation reviewed: _____ ☐ State Agency Queried? Date: ____/____/____ Agency Name: _____

Type of media: _____ How received: _____ Agency contact: _____ Confirmation Type: ☐ Notice, attached

Date/Expiration Date of Documentation: ____/____/____

Identity of Documentation: _____

Date reviewed: ____/____/____

☐ Applicant name different than name on documentation (Note: _____)

Name: _____

_____ Certification that individual is part of applicant's household

_____ Certification that individual does not already receive Lifeline

Representative Signature: _____ Date: _____

NOTES : _____

HOW TO SUBMIT YOUR ENROLLMENT APPLICATION:

COMPLETE ENROLLMENT APPLICATION ONLINE: www.nowcommunications.com FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com
POSTAL MAIL : NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

HOW TO SUBMIT YOUR DOCUMENTATION:

TEXT A DOCUMENT: (816) 446-3388 FAX: (877) 465-0545 EMAIL: nowcommunications@birch.com POSTAL MAIL: NOW Communications, 2300 Main St., Suite 340, Kansas City, MO 64108.

DOCUMENTATION REQUIREMENTS

**You are required to provide proof of your participation in the programs you identified
OR proof of your qualifying income.**

PROGRAM ELIGIBILITY

If, on page 1 of this form, you indicated you were in a qualifying program. You must provide documentation to prove receipt of benefits under these programs to NOW Communications. Upon examination by NOW Communications, any copies, photos or faxes of your documentation will be destroyed or returned to you at your request. Acceptable forms of documentation are described below:

Public Housing Assistance (FPHA) or Section 8

There are two types of documentation that can prove receipt of benefits under the Public Housing Assistance (FPHA), or Section 8, Program. **First**, an applicant can provide an award letter. A recipient of Public Housing Assistance (FPHA), or Section 8, receives an award letter from his or her local Public Housing Agency (PHA). The award letter should include the following information: name of program, date of award, name of beneficiary and award amount.

Second, an applicant can provide either a [Public Housing Assistance Lease Agreement](#)  or a Section 8 Voucher. These items should clearly reflect the type of Public Housing Assistance credit issued.

If the beneficiary does not have an award letter, lease agreement, or voucher, the applicant can contact the agency that approved the application and request formal documentation of his or her award. To find contact information for a local Public Housing Agency, please visit the U.S. Department of Housing and Urban Development's [state contact and agency listing](#).

The beneficiary named on the FPHA documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, NOW Communications must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Low Income Home Energy Assistance Program (LIHEAP)

Because the Low Income Home Energy Assistance Program (LIHEAP) is administered by a wide range of local agencies, the program's name may vary by state (note that most include the words "energy assistance program" in the name). There are two types of documentation applicants can provide to demonstrate receipt of LIHEAP benefits.

First, a LIHEAP participant might have an award letter from a state agency. The award letter will include the following: name of program, date of award, name of beneficiary and award amount. In some instances, if the beneficiary received notification of his or her approval in-person, the awardee might not have a formal award letter and will need to contact the state agency that approved the application to request a formal award letter.

Second, a LIHEAP participant can provide a utility bill that reflects the Housing Assistance credit. The utility bill should clearly reflect inclusion of an Energy Assistance credit.

The beneficiary named on the LIHEAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

To find contact information for a local LIHEAP agency, please visit the Low Income Home Energy Assistance Program's [state contact and agency listing](#).

National School Lunch Program's Free Lunch Program (NSLP)

Although the National School Lunch Program's Free Lunch Program (NSLP) is a federally assisted program, award letters are provided by state agencies and, thus, will vary by locality. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award. The beneficiary named on the NSLP documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Supplemental Security Income (SSI)


Participation in the federal portion of SSI is an eligibility criterion for Lifeline. Some states offer state supplements to the federal SSI program, but receipt of benefits from the state supplement, but not federal SSI, does not qualify an individual for Lifeline. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary, date of award and award amount. A benefit check stub from the Social Security Administration may also be submitted as proof of participation, if the check stub clearly states the date and name of the beneficiary.

The beneficiary named on the SSI documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Temporary Assistance for Needy Families (TANF)

All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.


The beneficiary named on the TANF documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, TANF might be more commonly referred to by a different name. Look for your state on this list of [TANF program names by state](#) .

Supplemental Nutrition Assistance Program (SNAP)

The Supplemental Nutrition Assistance Program (SNAP) was previously known as Food Stamps. Beneficiary cards and award letters may vary because SNAP is administered on a state level. Because not all beneficiary cards include the recipient's name, it is recommended that an award letter from the local state agency be used for Lifeline verification purposes. All award letters should contain the following basic information: name of program, name of beneficiary, address of beneficiary and date of award.

The beneficiary named on the SNAP documentation may be a member of the Lifeline applicant's household, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

In some states, SNAP might be more commonly referred to by a different name. Look for your state on this list of [SNAP program names by state](#) .

Medicaid

Each state provides its own unique Medicaid card to beneficiaries. However, most cards should clearly state the following: name of program, name of beneficiary, state of residence, issued or effective date and the name of the state agency that provided the card.

The beneficiary named on the Medicaid documentation may be a dependent of the Lifeline applicant, rather than the applicant. If the name of the beneficiary on the documentation provided does not match the name of the Lifeline applicant, the ETC must record the name of the beneficiary and confirm by receiving certification from the applicant that the named beneficiary is a member of his or her household, and that this individual does not receive Lifeline.

Some states have different names for their Medicaid programs. Look for your state on this list of [Medicaid program names by state](#) .

PROGRAM ELIGIBILITY

An applicant may be eligible for Lifeline if he or she has a household income at or below 135% of the Federal Poverty Guidelines. Below are the acceptable types of documentation:

- The prior year's state, federal, or Tribal tax return
- A current income statement from an employer or paycheck stub
- A Social Security statement of benefits
- A Veterans Administration statement of benefits
- A retirement or pension statement of benefits
- An Unemployment or Workers' Compensation statement of benefits
- A federal or Tribal notice letter of participation in General Assistance
- A divorce decree, child support award, or other official document containing income information
- If the documentation relied on does not cover a full year, such as a

135% FEDERAL POVERTY GUIDELINES - 2012	
Members of Household	Household Income must be at or below
1	\$ 15,080
2	\$ 20,426
3	\$ 25,772
4	\$ 31,118
5	\$ 36,464
6	\$ 41,810
7	\$ 47,156
8	\$52,502
For every additional member of your household, add \$4,950.	

Optional Lifeline Household Worksheet

Complete only if you checked "A shared, multi-household residence" on your enrollment form

Name	
Address	
Telephone Number	

Lifeline is a government program that provides a monthly discount on home or mobile telephone services. Only ONE Lifeline discount is allowed per household. Members of a household are not permitted to receive Lifeline service from multiple telephone companies.

Your **household** is everyone who lives together at your address as one economic unit (including children and people who are not related to you).

The **adults** you live with are part of your **economic unit** if they contribute to and share in the income and expenses of the household. An **adult** is any person 18 years of age or older, or an emancipated minor (a person under age 18 who is legally considered to be an adult). Household **expenses** include food, health care expenses (such as medical bills) and the cost of renting or paying a mortgage on your place of residence (a house or apartment, for example) and utilities (including water, heat and electricity). **Income** includes salary, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, and lottery winnings.

Spouses and domestic partners are considered to be part of the same household. Children under the age of 18 living with their parents or guardians are considered to be part of the same household as their parents or guardians. If an adult has no income, or minimal income, and lives with someone who provides financial support to that adult, both people are considered part of the same household.

You have been asked to complete this Worksheet because someone else currently receives a Lifeline-supported service at your address. This other person may or may not be a part of your household. Answer the questions below to determine whether there is more than one household residing at your address.

- Does your spouse or domestic partner (that is, someone you are married to or in a relationship with) already receive a Lifeline-discounted phone? (check no if you do not have a spouse or partner) ____ **YES** ____ **NO**
 - If you checked **YES**, you may not sign up for Lifeline because someone in your household already receives Lifeline. Only ONE Lifeline discount is allowed per household.
 - If you checked **NO**, please answer question #2.
- Other than a spouse or partner, do other adults (people over the age of 18 or emancipated minors) live with you at your address?

A. A parent	____ YES ____ NO	D. An adult roommate	____ YES ____ NO
B. An adult son or daughter	____ YES ____ NO	E. Other	____ YES ____ NO
C. Another adult relative (such as a sibling, aunt, cousin, grandparent, grandchild, etc.)	____ YES ____ NO		

 - If you checked **NO** for each statement above, you do not need to answer the remaining questions. Please initial line B, below, and sign and date the worksheet.
 - If you checked **YES**, please answer question #3.
- Do you share living expenses (bills, food, etc.) and share income (either your income, the other person's income or both incomes together) with at least one of the adults listed above in question #2? ____ **YES** ____ **NO**
 - If you checked **NO**, then your address includes **more than one household**. Please initial lines A and B below, and sign and date the worksheet.
 - If you checked **YES**, then your address includes only **one household**. You may not sign up for Lifeline because someone in your household already receives Lifeline.

CERTIFICATION

Please initial the certifications below and sign and date this worksheet. Submit this worksheet to NOW Communications along with your Lifeline application.

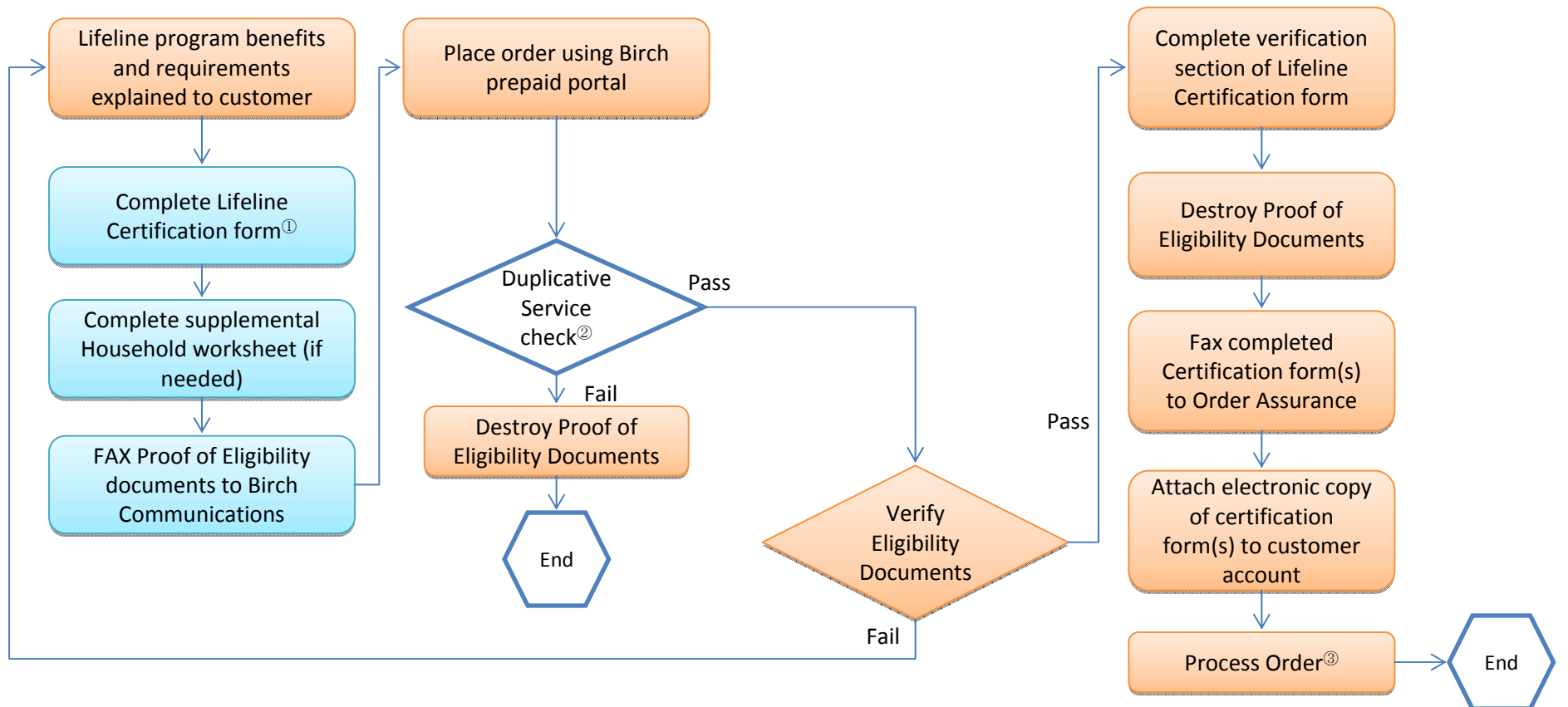
- ____ I certify that I live at an address occupied by multiple households.
- ____ I understand that violation of the one-per-household requirement is against the Federal Communication Commission's rules and may result in me losing my Lifeline benefits, and potentially, prosecution by the United States government.

Signature _____ Date _____

Attachment B **to** **Compliance Plan**

Flow-Charts Depicting Birch Internal
Processes for Lifeline Compliance

Lifeline Certification process – Internal Sales Agents



① Certification form may be completed by one of the following methods:

- Hand-written paper form
- Third-Party Verification (TPV)
- Electronic Signature (DocuSign)

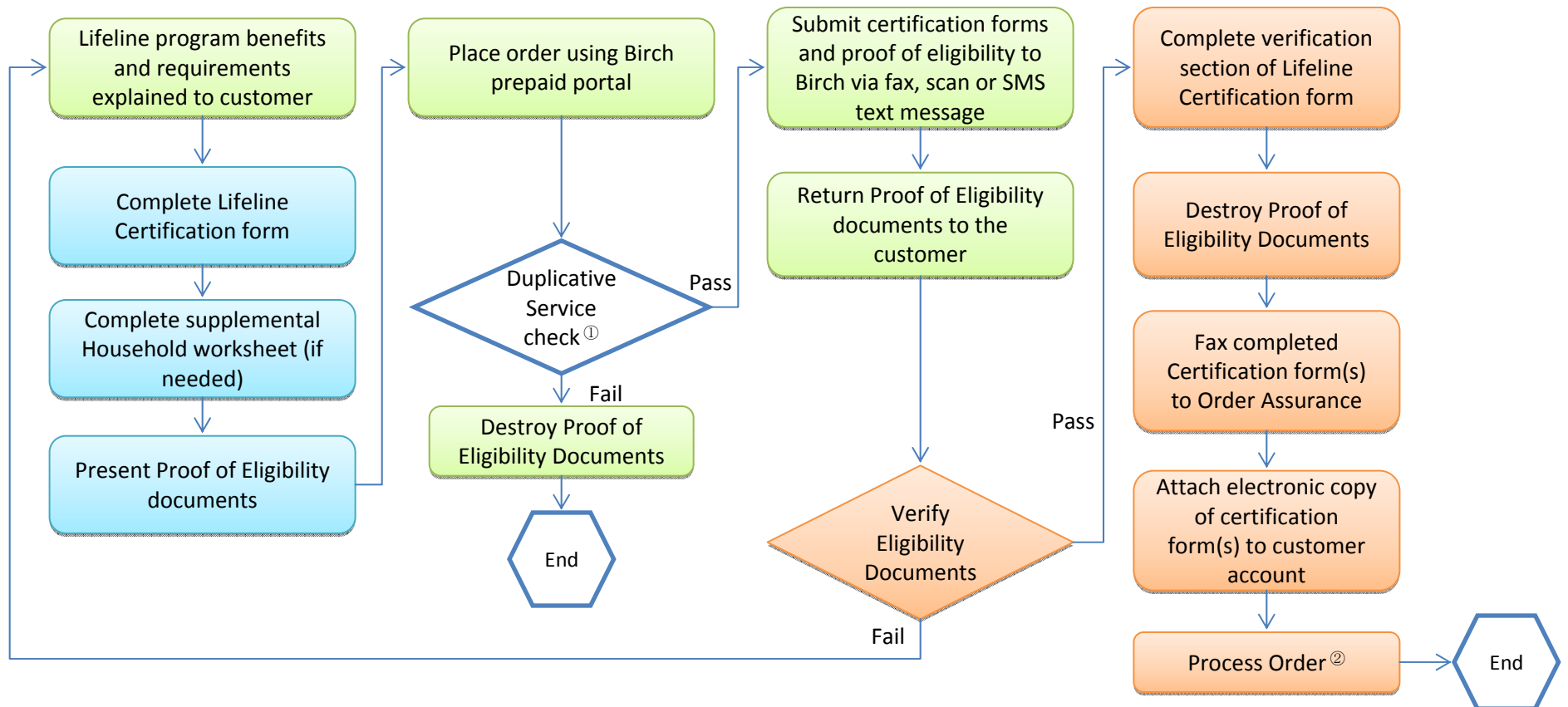
② When duplicative service is found, Birch will determine if customer is part of multi-household residence

③ Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage

Customer

Birch Communications

Lifeline Certification process – Authorized Dealers



① When duplicative service is found, Birch will determine if customer is part of multi-household residence

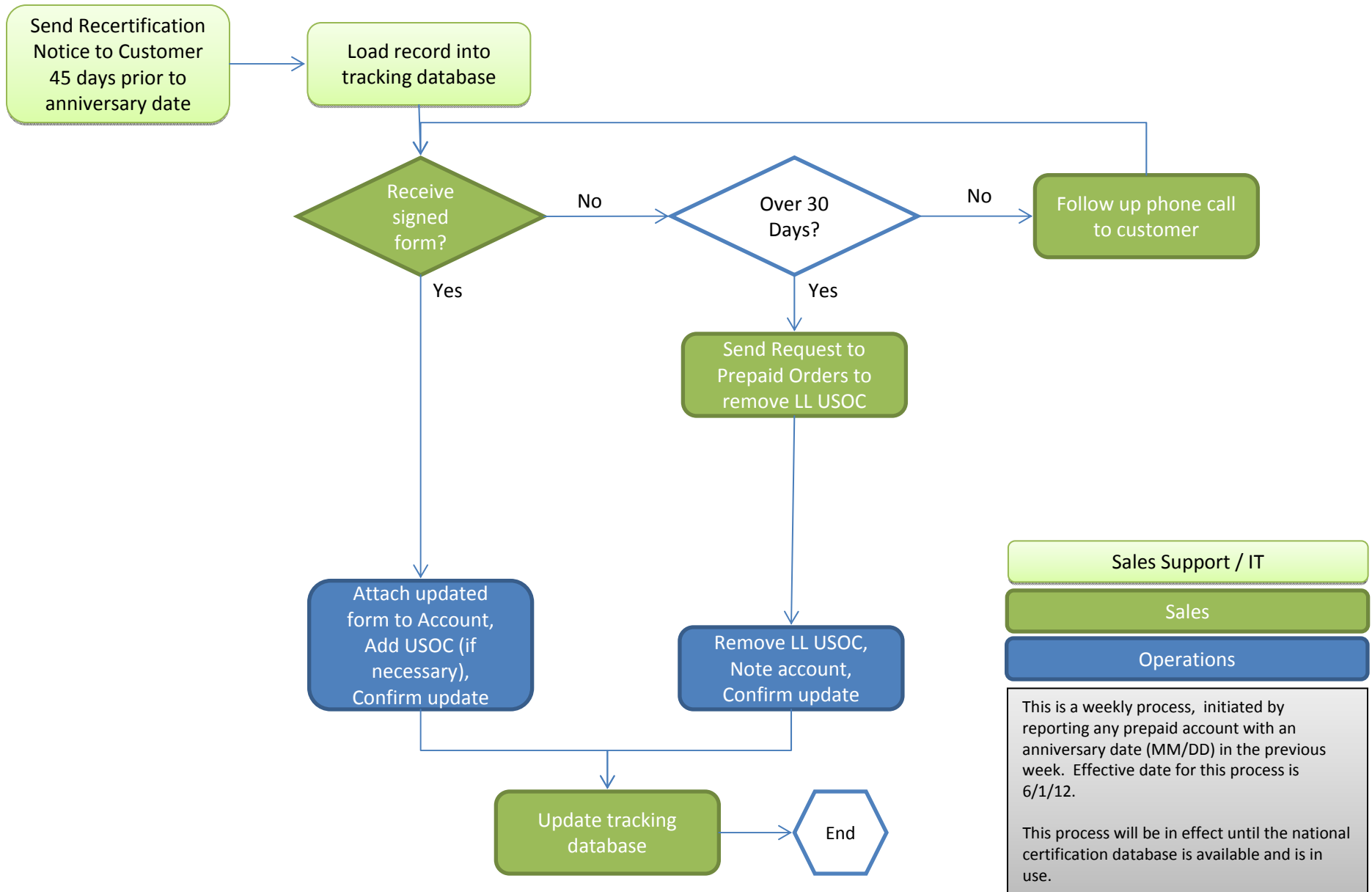
② Wireless handsets will be shipped to the customer in an inactive state. Birch will not seek lifeline reimbursement from USAC until the customer activates the device and incurs usage

Birch Authorized Dealer

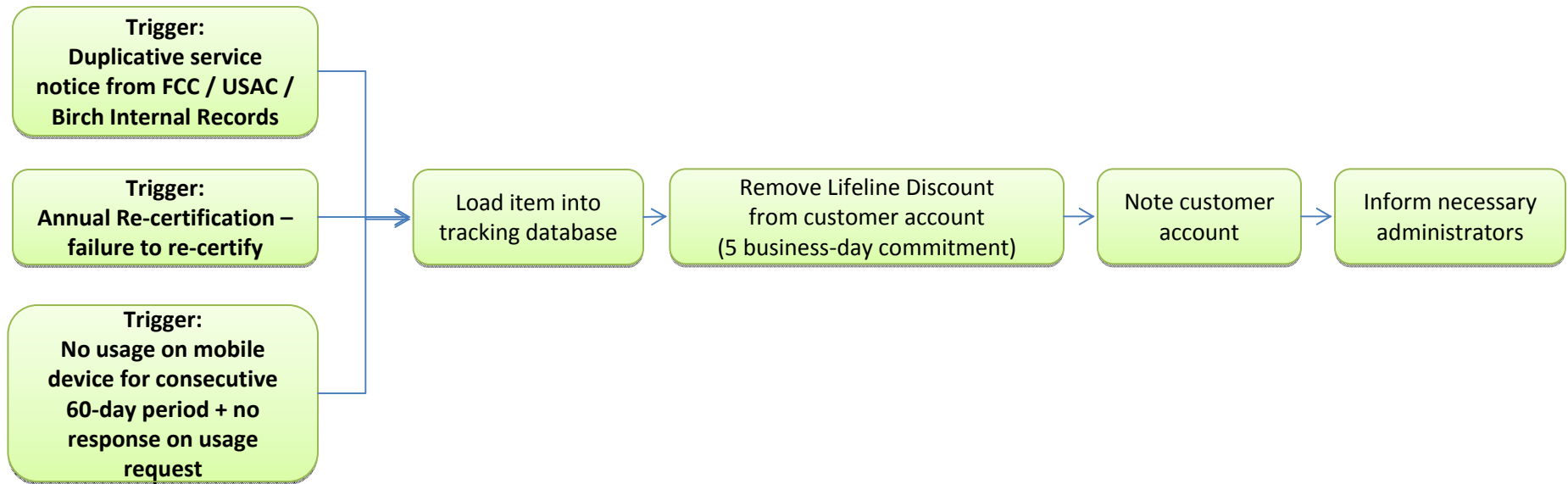
Customer

Birch Communications

Annual Lifeline Re-Certification

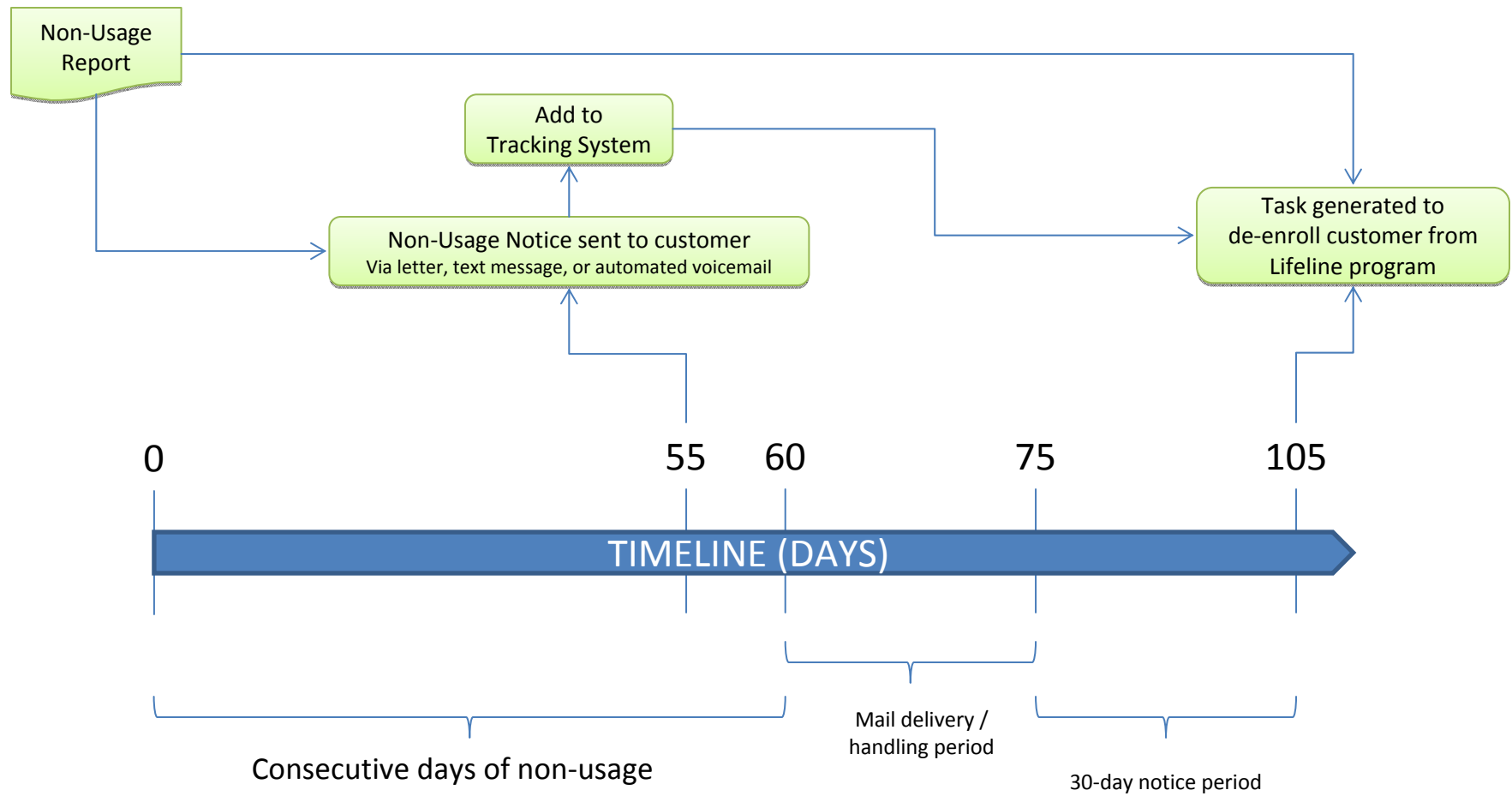


Lifeline De-enrollment Scenarios



- De-enrollment in Lifeline program will remove the customer from any USAC filings for reimbursement of the lifeline discount amount.
- All wireless handsets, regardless of activation status, will retain the capability of dialing and reaching emergency-911

Non-Usage notification



**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)
)
APPLICATION OF BIRCH TELECOM)
OF THE SOUTH, INC., USING THE)
TRADE/BRAND NAME “NOW)
COMMUNICATIONS,” FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF SOUTH CAROLINA

EXHIBIT 5

**FCC PUBLIC NOTICE OF APPROVAL
DATED AUGUST 8, 2012**



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-1286

Release Date: August 8, 2012

WIRELINE COMPETITION BUREAU APPROVES THE COMPLIANCE PLANS OF BIRCH COMMUNICATIONS, BOOMERANG WIRELESS, IM TELECOM, Q LINK WIRELESS AND TAG MOBILE

WC Docket Nos. 09-197 and 11-42

The Wireline Competition Bureau (Bureau) approves the compliance plans of five carriers: Birch Communications, Inc. (Birch); Boomerang Wireless, LLC (Boomerang); IM Telecom, LLC (IM); Q Link Wireless, LLC (Q Link); and TAG Mobile, LLC (TAG). The compliance plans were filed pursuant to the *Lifeline Reform Order* as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended (the Act), for the provision of Lifeline service.¹

The Act provides that in order to be designated as an eligible telecommunications carrier for the purpose of universal service support, a carrier must “offer the services that are supported by Federal universal service support mechanisms . . . either using its own facilities or a combination of its own facilities and resale of another carrier’s services”² The Commission recently amended its rules to define voice telephony as the supported service and removed directory assistance and operator services, among other things, from the list of supported services.³ As a result of these amendments, many Lifeline-only ETCs that previously met the facilities requirement by providing operator services, directory assistance or other previously supported services no longer meet the facilities requirement of the Act.⁴ In the *Lifeline Reform Order*, the Commission found that a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6816-17 at paras. 379-380 (2012) (*Lifeline Reform Order*). A list of the compliance plans approved through this Public Notice can be found in the Appendix to this Public Notice.

² 47 U.S.C. § 214(e)(1)(A).

³ See *Connect America Fund*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692-93, paras. 77-78, 80 (2011); *pets. for review pending sub nom. In re: FCC 11-161*, No. 11-9900 (10th Cir. filed Dec. 8, 2011); *Connect America Fund*, WC Docket No. 10-90 *et al.*, Order on Reconsideration, 26 FCC Rcd 17633, 17634-35, para. 4 (2011) (*USF/ICC Transformation Order on Reconsideration*).

⁴ See *Lifeline Reform Order*, 27 FCC Rcd 6812, at para. 366, App. A; *USF/ICC Transformation Order on Reconsideration* at para. 4. Some ETCs have included language in their compliance plans indicating that they have facilities or plan to acquire facilities in the future. See, e.g., Blanket Forbearance Compliance Plan, WC Docket Nos. 09-197 and 11-42, Q Link Wireless, LLC’s Third Amended Compliance Plan at 4 n. 2 (filed July 30, 2012). To the extent ETCs seek to avail themselves of the conditional forbearance relief established in the *Lifeline Reform Order*, we presume they lack facilities to provide the supported service under section 54.101 and 54.401 of the Commission’s rules. See 47 C.F.R. §§ 54.101 and 54.401. Such ETCs must comply with the compliance plan approved herein in each state or territory where they are designated as an ETC, regardless of their claim of facilities for other purposes, such as eligibility for state universal service funding.

seeking to provide Lifeline-only service.⁵ Therefore, in the *Lifeline Reform Order*, the Commission conditionally granted forbearance from the Act's facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligations contained in the *Order*.⁶

The Bureau has reviewed the five plans listed in the Appendix for compliance with the conditions of the *Lifeline Reform Order*, and now approves those five compliance plans.⁷

Filings, including the Compliance Plans identified in the Appendix, and comments are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, telephone: (202) 488-5300, fax: (202) 448-5563, or via email www.bcpweb.com.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-7400 or TTY (202) 418-0484.

For further information, please contact Divya Shenoy, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418-7400 or TTY (202) 418-0484.

- FCC -

⁵ See *Lifeline Reform Order*, 27 FCC Rcd 6813-6817 at paras. 368-381.

⁶ See *id.* at paras. 373 and 389. Subsequently, the Bureau provided guidance for carriers submitting compliance plans pursuant to the *Lifeline Reform Order*. *Wireline Competition Bureau Provides Guidance for the Submission of Compliance Plans Pursuant to the Lifeline Reform Order*, WC Docket Nos. 09-197 and 11-42, Public Notice, 27 FCC Rcd 2186 (Wireline Comp. Bur. 2012).

⁷ The Commission has not acted on any pending ETC petitions filed by these carriers, and this Public Notice only approves the compliance plans of the carriers listed above. While these compliance plans contain information on each carrier's Lifeline offering, we leave it to the designating authority to determine whether or not the carrier's Lifeline offerings are sufficient to serve consumers. See *Lifeline Reform Order*, 27 FCC Rcd 6679-80, 6818-19 at paras. 50 and 387.

APPENDIX

Petitioner	Compliance Plans As Captioned by Petitioner	Date of Filing	Docket Numbers
Birch Communications, Inc.	Further Amended Compliance Plan of Birch Communications, Inc.	July 2, 2012	09-197; 11-42
Boomerang Wireless, LLC	Boomerang Wireless, LLC Revised Compliance Plan	July 26, 2012	09-197; 11-42
IM Telecom, LLC	IM Telecom, LLC d/b/a Infiniti Mobile Compliance Plan	July 5, 2012	09-197; 11-42
Q Link Wireless, LLC	Q Link Wireless, LLC's Third Amended Compliance Plan	July 30, 2012	09-197; 11-42
TAG Mobile, LLC	TAG Mobile, LLC Compliance Plan	July 26, 2012	09-197; 11-42

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA**

IN RE:)
)
APPLICATION OF BIRCH TELECOM)
OF THE SOUTH, INC., USING THE)
TRADE/BRAND NAME “NOW)
COMMUNICATIONS,” FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF SOUTH CAROLINA	

EXHIBIT 6

SAMPLE ADVERTISING

**Prepaid
Home Phone Service
Starting at \$15.99!***

With Lifeline Pricing

Now You're Talking

NWSM
COMMUNICATIONS

Prepaid division of Birch Communications

- **No contracts**
- **No credit checks**
- **No problem**

*Price includes Lifeline discount. Additional terms and conditions may apply.

Long Distance **ELLITE TEL**

Great International Rates and Here 0.8¢

\$10	Country	\$5	\$10
1.00	Latvia	.80	.80
1.00	Malaysia	.80	.80
1.00	Mexico	.80	.80
1.00	Morocco	.80	.80
1.00	Norway	.80	.80
1.00	Poland	.80	.80
1.00	Romania	.80	.80
1.00	Slovakia	.80	.80
1.00	Slovenia	.80	.80
1.00	Spain	.80	.80
1.00	Sweden	.80	.80
1.00	Switzerland	.80	.80
1.00	Taiwan	.80	.80
1.00	Thailand	.80	.80
1.00	United Kingdom	.80	.80
1.00	USA	.80	.80
1.00	Vietnam	.80	.80
1.00	Yugoslavia	.80	.80

Prepaid Wireless

at&t

on wireless

Post

Prepaid Wireless

ess

time

Prepaid Wireless

Refill



Home phone starting at \$15⁹⁹

800-4-A-PHONE

(800-427-4663)

Free install, no credit checks.

Price includes Lifeline discount. Additional terms and conditions apply. Please talk with your NOW sales professional for more information.

Now You're Talking[™]

NOWSM
COMMUNICATIONS


Face # 0001176-1 - Hemphill St S/O 14Th St W/S



Photo taken on: 7/24/2012



Photo taken on: 7/24/2012

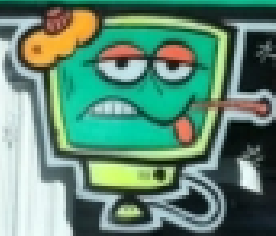
CLEAR 

AUTHORIZED

RETAILER

COMPUTER
REPAIR

WE DO
VIRUS
REMOVAL




*Now You're Talking*TM

NOW
COMMUNICATIONS

1663

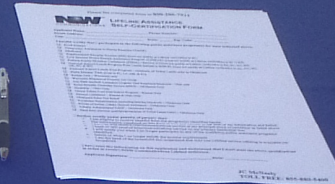
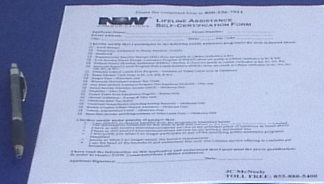
OPEN

CLEAR 

STORE HOURS
MONDAY - FRIDAY
10:00 AM - 6:00 PM
SATURDAY
10:00 AM - 4:00 PM
888.296.6267

monthly4G
\$50
Unlimited
Talk, Text
& Data





Now You're Talking

NW SM
COMMUNICATIONS

HOT 103 JAMZ!

**Prepaid
Home Phone Service
Starting at \$15.99!**

with limited service

Now You're Talking

NW
COMMUNICATIONS

- No contracts
- No credit checks
- No problem